

CHAPTER 3
SCHOOL DISTRICTS

Authority

N.J.S.A. 18A:4-10, 18A:4-15, 18A:6-10, 18A:6-50, 18A:7A-1, 18A:7A-1.1, 18A:10-6, 18A:12-21 et seq., 18A:13-14, 18A:16-1, 18A:17-14 to 14.3, 18A:17-15, 18A:17-17, 18A:17-20, 18A:17-32, 18A:17-42 to 17-45, 18A:18A-4, 18A:18A-6, 18A:22-1, 18A:22-2, 18A:22-14, 18A:22-19, 18A:22-22, 18A:24-11, 18A:28-9 to 28-13, 18A:29-6 to 29-16, 18A:40-12.1 and 18A:49-1 to 49-8.

Source and Effective Date

R.1993 d.272, effective June 7, 1993.
See: 25 N.J.R. 1095(a), 25 N.J.R. 2249(a).

Chapter Expiration Date

Pursuant to Executive Order No. 22(1994), Chapter 3, School Districts, expires on December 7, 1999. See: 26 N.J.R. 3783(a) and 3942(a).

Chapter Historical Note

All provisions of this chapter became effective prior to September 1, 1969.

1975 Revisions: Amendments became effective April 9, 1975 as R.1975 d.98. See: 7 N.J.R. 97(a), 7 N.J.R. 203(a). Subchapter 2 became effective May 16, 1975 as R.1975 d.124. See: 6 N.J.R. 465(a), 7 N.J.R. 251(b).

1976 Revisions: Amendments became effective January 16, 1976 as R.1976 d.13. See: 7 N.J.R. 541(a), 8 N.J.R. 62(a). Subchapter 3, became effective September 8, 1976 as R.1976 d.286. See: 8 N.J.R. 458(a).

1977 Revisions: Amendments became effective March 7, 1977 as R.1977 d.68. See: 9 N.J.R. 11(a), 9 N.J.R. 167(a). Subchapter 4 became effective April 13, 1977 as R.1977 d.129. See: 9 N.J.R. 113(a), 9 N.J.R. 121(b). Further amendments became effective November 10, 1977 as R.1977 d.421. See: 9 N.J.R. 458(b), 9 N.J.R. 559(b).

1978 Revisions: Amendments became effective January 11, 1978 as R.1978 d.7. See: 9 N.J.R. 558(c), 10 N.J.R. 59(a). Amendments to Subchapter 2 became effective March 7, 1978 as R.1978 d.87. See: 10 N.J.R. 56(b), 10 N.J.R. 142(c). Further amendments became effective October 4, 1978 as R.1978 d.355. See: 10 N.J.R. 378(c), 10 N.J.R. 473(b).

1979 Revisions: Amendments became effective May 3, 1979 as R.1979 d.170. See: 11 N.J.R. 168(a), 11 N.J.R. 274(b). Further amendments became effective September 1, 1979 as R.1979 d.227. See: 10 N.J.R. 226(a), 10 N.J.R. 319(d). Further amendments became effective December 7, 1979 (operative September 1, 1980) as R.1979 d.480. See: 11 N.J.R. 536(b), 12 N.J.R. 7(a).

1983 Revisions: This chapter was readopted pursuant to Executive Order 66(1978) effective June 3, 1983 with amendments to the chapter effective June 20, 1983 as R.1983 d.248. See: 15 N.J.R. 376(a), 15 N.J.R. 1016(b). Subchapter 3 was readopted in compliance with Executive Order 66(1978) effective August 18, 1983 with amendments to the subchapter effective September 6, 1983 as R.1983 d.368. See: 15 N.J.R. 728(a), 15 N.J.R. 1468(c). Amendments to section 1.10 became effective June 20, 1983 (operative September 1, 1983) as R.1983 d.255. See: 15 N.J.R. 464(a), 15 N.J.R. 1017(a). Further amendments became effective December 5, 1983 as R.1983 d.563. See: 15 N.J.R. 1409(a), 15 N.J.R. 2034(a).

1984 Revisions: Amendments became effective July 2, 1984 as R.1984 d.265. See: 16 N.J.R. 785(a), 16 N.J.R. 1718(a). New rule

promulgated at N.J.A.C. 6:3-1.23 as R.1984 d.504, effective November 5, 1984 (operative July 1, 1985). See: 16 N.J.R. 1850(a), 16 N.J.R. 3008(a).

1985 Revisions: Amendments became effective April 1, 1985 as R.1985 d.151. See: 17 N.J.R. 143(a), 17 N.J.R. 811(a). Further amendments became effective August 5, 1985 as R.1985 d.397. See: 17 N.J.R. 1033(b), 17 N.J.R. 1874(a). Further amendments became effective October 21, 1985 as R.1985 d.527. See: 17 N.J.R. 650(a), 17 N.J.R. 2540(a).

1987 Revisions: Amendments to Subchapter 2 became effective May 4, 1987 as R.1987 d.209. See: 19 N.J.R. 333(a), 19 N.J.R. 749(a).

1988 Revisions: Amendments to Subchapter 2 became effective May 2, 1988 as R.1988 d.199. See: 20 N.J.R. 133(b), 20 N.J.R. 978(b). Amended by R.1988 d.367, effective August 1, 1988. See: 20 N.J.R. 1027(b), 20 N.J.R. 1879(b). New Rule promulgated at N.J.A.C. 6:3-1.23 as R.1988 d.491, effective October 17, 1988. See: 20 N.J.R. 1320(c), 20 N.J.R. 2567(a).

1989 Revisions: Subchapter 5 was adopted as R.1989 d.193, effective April 3, 1989. See: 21 N.J.R. 3(b), 21 N.J.R. 892(a). Subchapter 6 was adopted as R.1988 d.354, effective July 3, 1989. See: 21 N.J.R. 817(a), 21 N.J.R. 1824(b).

1990 Revisions: N.J.A.C. 6:3-1.18 repealed by R.1990 d.47, effective January 16, 1990. See: 21 N.J.R. 2915(a), 22 N.J.R. 174(a). Amendments by R.1990 d.380, effective August 1990. See: 22 N.J.R. 1302(a), 22 N.J.R. 2344(a). N.J.A.C. 6:3-1.11 and 1.12 repealed by R.1990 d.510, effective October 15, 1990. See: 22 N.J.R. 1873(a), 22 N.J.R. 3240(a). Subchapter 7 was adopted as R.1990 d.615, effective December 17, 1990. See: 22 N.J.R. 2630(a), 22 N.J.R. 3734(b).

1992 Revisions: Amended by R.1992 d.490, effective December 7, 1992. See: 24 N.J.R. 3038(a), 24 N.J.R. 4362(a).

1993 Revisions: Chapter 3, School Districts, was repealed and replaced by new rules pursuant to Executive Order No. 66(1978) as R.1993 d.272, effective June 7, 1993. See: Source and Effective Date. Subchapter 9, School Ethics Commission, was adopted as R.1993 d.394, effective August 2, 1993. See: 25 N.J.R. 1924(a), 25 N.J.R. 3511(a).

See section annotations for specific rulemaking.

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SUBCHAPTER 1. BOARDS OF EDUCATION

6:3-1.1 Board of school estimate

In any district board of education operating under N.J.S.A. 18A:9-2, the mayor of the municipality comprising the school district shall be the presiding officer of the board of school estimate, and in the event of the absence of the mayor at any meeting of the board of school estimate, the members thereof present at such meeting shall proceed to elect a presiding officer pro tem.

Case Notes

Rescission of candidate's withdrawal from school board election affirmed. *Monaghan v. Board of Education of Ridgefield Park*, 97 N.J.A.R.2d (EDU) 471.

School board's bylaws providing for agenda meeting before holding regular board meeting not legally enforceable. *Sooy v. Mainland Regional High School District*, 97 N.J.A.R.2d (EDU) 295.

Commissioner of Education could not intervene in school board's decision not to extend minibus service where decision was not proven unreasonable. *Shrewsbury v. Board of Education of Holland Township*, 96 N.J.A.R.2d (EDU) 795.

Failure to rehire recovered disability retiree was within school board's discretion. *Bublin v. Board of Education of the Borough of Point Pleasant*, 96 N.J.A.R.2d (EDU) 768.

School board's policy to ban backpacks in interest of safety constituted valid exercise of discretion. *Board of Education of Bernards Township v. C.M.*, 96 N.J.A.R.2d (EDU) 762.

Post-referendum change from two-story plan to one-story plan for new school was within school board's discretion. *Shuster v. Montgomery Township Board of Education*, 96 N.J.A.R.2d (EDU) 670.

Appointment of school board member by lame-duck mayor with less than one month remaining in his term. *Cordasco v. Board of Education of the Town of West New York*, 96 N.J.A.R.2d (EDU) 661.

Open Public Meeting Act was not violated by socializing after board of education meeting. *Kesselman v. Edison, Township Board of Education*, 96 N.J.A.R.2d (EDU) 436.

School board member not entitled to legal expenses incurred for personal reasons rather than in line of duty. *Quick v. Old Bridge Township Board of Education*, 96 N.J.A.R.2d (EDU) 116.

Employment as deputy fire chief did not place individual in conflict of interest so as to disqualify him from seeking election to school board. *Battiloro v. Westfield Board of Education*, 95 N.J.A.R.2d (EDU) 445.

Functions and duties as school business administrator and as mayor were inherently antagonistic and warranted administrator's suspension for conflict of interest. *Irvington Municipal Council v. Steele*, 95 N.J.A.R.2d (EDU) 123.

Bus driver for transportation company under contract with district board was not automatically ineligible for board membership. *Union Board of Education v. Andrews*, 95 N.J.A.R.2d (EDU) 350.

Submission date for nominating petitions for school board membership; insufficient signatures and subsequent registration of signers. *Jones v. Peddle*, 94 N.J.A.R.2d (EDU) 362.

Local school boards could not aggregate health coverage. Millstone Township Teachers Association v. Millstone Township Board of Education, 93 N.J.A.R.2d (EDU) 802.

Police officer assigned as security officer at high school was not disqualified from membership on board of education. Ubaldini v. Cancel, 93 N.J.A.R.2d (EDU) 157.

Board employee and union official not qualified to seek election to Board. Board of Education of Township of Howell v. Suchcicki, 93 N.J.A.R.2d (EDU) 175.

No disqualifying conflict of interest between police officer's membership on board of education and providing security services. North Brunswick Township Education Association v. Board of Education of Township of North Brunswick, 93 N.J.A.R.2d (EDU) 74.

Board of education membership; conflict of interest; law suit. Board of Education of Township of Jackson, Ocean County v. Acevedo, 92 N.J.A.R.2d (EDU) 163.

6:3-1.2 Special meetings of district boards of education

In every school district of the State, it shall be the duty of the secretary of the board of education to call a special meeting of the board whenever requested by the president of the board to do so or whenever there shall be presented to such secretary a petition signed by a majority of the whole number of members of the district board of education requesting the special meeting. Public notice of such special meeting shall be made pursuant to law and regulation. In accordance with N.J.S.A. 18A:10-6 and N.J.S.A. 10:4-6 et seq., the public notice shall include the date, time, location, and purpose(s) of the special meeting.

Case Notes

School board acted improperly and in violation of open meeting requirements by discussing public business after meeting had officially ended. Davis v. Willingboro Board of Education, 95 N.J.A.R.2d (EDU) 352.

Cancellation of public forum; school board policies and Open Public Meetings Act. N.J.S.A. 10:4-12. Fuhrmann v. Board of Educ. of the Borough of Middlesex, 93 N.J.A.R.2d (EDU) 416.

6:3-1.3 Minimum bond requirements for treasurer of school moneys

(a) The minimum requirements for the surety bond for the treasurer of school moneys shall be such percentage of the current year's school budget as is required in the schedule set forth below:

Total School Budget	Minimum Bond Required
Up to \$100,000.00	10 percent of budget (Minimum \$5,000)
\$100,000.01 to \$250,000.00	\$10,000 plus eight percent of all over \$100,000
\$250,000.01 to \$500,000.00	\$22,000 plus six percent of all over \$250,000
\$500,000.01 to \$750,000.00	\$37,000 plus four percent of all over \$500,000
\$750,000.01 to \$1,000,000.00	\$47,000 plus two percent of all over \$750,000
\$1,000,000.01 to \$2,000,000.00	\$52,000 plus one percent of all over \$1,000,000
\$2,000,000.01 to \$5,000,000.00	\$62,000 plus 1/2 percent of all over \$2,000,000
\$5,000,000.01 to	\$77,000 plus 1/4 percent

Total School Budget
\$10,000,000.00
\$10,000,000.01
and upwards

Minimum Bond Required
of all over \$5,000,000
\$89,500 plus 1/8 percent
of all over \$10,000,000

(b) In fixing such minimum bond, the nearest even \$1,000 shall be used.

(c) The independent school auditor shall verify the adequacy of the treasurer's surety bond which is required by N.J.S.A. 18A:17-32 and shall include appropriate comment, and a recommendation, if needed, in the annual school audit report.

6:3-1.4 Local district responsibility for employment of staff

(a) State certification requirements are those structured training and competency evaluation requirements that are prescribed by the State Board of Education in order to protect the public. In addition, the teaching and other background experiences of candidates for professional positions may often be important considerations in the local selection of specific staff for specific positions. Each district board of education shall determine the types of background experiences and personal qualities, if any, that the district requires or prefers successful candidates for specific positions to possess in addition to appropriate State certification. Such local requirements shall be based upon a careful review of the position in question, and the requirements shall emphasize the nature of experience and the quality of individual achievement desired, rather than only the amount of experience.

(b) No teaching staff member shall be employed in the public schools by any board of education unless he or she is the holder of a valid certificate (see N.J.S.A. 18A:26-2). In addition, district boards of education should exercise their right and responsibility to require job candidates to present other, more detailed documentation of their competency. Such documentation includes resumes, references, records of past experiences, college transcripts, certification test scores, assessment reports, internship evaluations, and other documentation of competency relevant to the specific position.

(c) District boards of education shall assign to administrative positions those functions which are consistent with the individual qualifications of the position occupant, and shall support the establishment of structures for making instructional decisions that take administrator qualifications into account.

Case Notes

Applicant for position as school custodian failed to demonstrate adequate rehabilitation from narcotics conviction where applicant was still on probation for most recent offense, and applicant had violated probation many times in past. In the Matter of Vincent L. Lindsey, 96 N.J.A.R.2d (EDU) 1020.

School board member was reprimanded for voting on his wife's employment as classroom aide. In the Matter of Wayne Wurtz, 96 N.J.A.R.2d (EDU) 843.

Bus driver who failed to demonstrate rehabilitation after assault conviction was disqualified from school employment. In the Matter of the Disqualification of Srebnick, 96 N.J.A.R.2d (EDU) 833.

Chronic and excessive absenteeism warranted removal of tenured secretary. In the Matter of the Tenure Hearing of Linda Latona, 96 N.J.A.R.2d (EDU) 800.

Excessive absenteeism warranted withholding of employee's salary increment. Webb v. Board of Education of the Town of West Orange, 96 N.J.A.R.2d (EDU) 782.

Tenured employee's excessive absenteeism, neglect of duty, and misbehavior constituted sufficient cause for termination. In the Matter of Deal, 96 N.J.A.R.2d (EDU) 703.

Board of Education employee failed to establish entitlement to 60 days notice that her position would be eliminated. Allen v. Newark Board of Education, 96 N.J.A.R.2d (EDU) 688.

School custodian with criminal record was qualified for employment when proof of rehabilitation was shown. In the Matter of the Disqualification From School Employment of McCullough, 96 N.J.A.R.2d (EDU) 680.

Board of Education must provide analysis of job duties for newly created teaching position to determine reasonableness of dual certification requirement. Kopko v. Board of Education of the Borough of Cateret, 96 N.J.A.R.2d (EDU) 665.

Bus driver was properly dismissed after she was charged with narcotics possession, despite fact that charges were dropped upon driver's completion of pre-trial intervention program. Fagan v. Toms River School District Board of Education, 96 N.J.A.R.2d (EDU) 622.

Hearing disability consultant who demonstrated rehabilitation was not disqualified from school employment despite drug conviction. Kalapos v. New Jersey State Department of Education, 96 N.J.A.R.2d (EDU) 617.

Custodian with drug use record was not disqualified from school employment when rehabilitation was proven. Pruden v. New Jersey State Department of Education, 96 N.J.A.R.2d (EDU) 602.

Custodian's discharge for neglect of duty and unexplained absence from work was upheld. Jimenez v. City of Paterson School District, 96 N.J.A.R.2d (EDU) 600.

Applicant seeking certification as New Jersey school principal must have master's degree or substantial equivalent course work. Fisher v. State Board of Examiners, 96 N.J.A.R.2d (EDU) 561.

Bus driver with three ten-year-old drug convictions not precluded from school employment where evidence demonstrated rehabilitation. Seifred v. Department of Education, 96 N.J.A.R.2d (EDU) 558.

School employee was properly disqualified from employment due to past drug charges and convictions. In the Matter of the Disqualification from School Employment of Ali, 96 N.J.A.R.2d (EDU) 551.

Criminal history supported employment disqualification of teacher's aide. In the Matter of the Disqualification from School Employment of Chester, 96 N.J.A.R.2d (EDU) 547.

School custodian provided sufficient evidence of rehabilitation after drug conviction to overcome disqualification from public school employment. In the Matter of the Disqualification from School Employment of Lawrence, 96 N.J.A.R.2d (EDU) 532.

Single prior conviction coupled with rehabilitated lifestyle supported qualification for employment as public school security guard. In the Matter of the Disqualification from School Employment of Henderson, 96 N.J.A.R.2d (EDU) 530.

Insufficient evidence of rehabilitation after drug conviction supported disqualification of applicant for teacher's aide position from public school employment. In the Matter of the Disqualification from School Employment of Gowan, 96 N.J.A.R.2d (EDU) 528.

School employee's refusal to accept responsibility for criminal conduct supports disqualification from employment. Marshall v. Department of Education, 96 N.J.A.R.2d (EDU) 521.

Insufficient time of drug-free status after long criminal history precludes finding of rehabilitation and supports school custodian's disqualification from employment. Butler v. Department of Education, 96 N.J.A.R.2d (EDU) 517.

Bus driver's criminal history does not bar school employment where rehabilitation shown by clear and convincing evidence. Marcelle v. Department of Education, 96 N.J.A.R.2d (EDU) 515.

Tenured school board employee's continuous refusal to comply with board employment policy justifies termination. In the Matter of the Tenure Hearing of Powers, 96 N.J.A.R.2d (EDU) 508.

School bus driver demonstrated clear and convincing evidence of rehabilitation sufficient to overcome disqualification from school employment for prior criminal history. Gambale v. Department of Education, 96 N.J.A.R.2d (EDU) 505.

School custodian demonstrated rehabilitation by clear and convincing evidence and removed disqualification from employment for conviction for possession of marijuana. Trisuzzi v. Department of Education, 96 N.J.A.R.2d (EDU) 493.

Dismissal of teacher aide upheld where aide failed to demonstrate rehabilitation from past drug use. Chester v. Department of Education, 96 N.J.A.R.2d (EDU) 456.

Tenured school district employee properly dismissed for using his position to defraud federal government. In the Matter of the Tenure Hearing of Morton, 96 N.J.A.R.2d (EDU) 440.

Past drug convictions render school custodian unfit for school employment. Campbell v. Department of Education, 96 N.J.A.R.2d (EDU) 431.

School custodian demonstrated rehabilitation from criminal lifestyle and fitness for school employment. McCullough v. Department of Education, 96 N.J.A.R.2d (EDU) 420.

School employee working as audiovisual library technician entitled to tenure protection accorded clerks because job duties were primarily clerical. Roach v. South Orange-Maplewood School District, 96 N.J.A.R.2d (EDU) 370.

School custodian properly terminated for poor performance and unbecoming conduct. In the Matter of the Tenure Charges Against Nathan Purcell, 96 N.J.A.R.2d (EDU) 364.

Tenure rights were not violated where decision to abolish school district assistant purchasing agent's position was found to be reasonable. Dearden v. Board of Education of the City of Trenton, 96 N.J.A.R.2d (EDU) 321.

Tenured school board employee's rights not affected by school board's recoupment of salary overpayment in non-tenured position. Sklute v. Board of Education of the City of Trenton, 96 N.J.A.R.2d (EDU) 264.

Payroll supervisor for school board properly removed from position for unbecoming conduct after arranging for negative withholding on his own paycheck. In the Matter of the Tenure Charges Against Morton, 96 N.J.A.R.2d (EDU) 236.

School information systems control specialist not tenured clerical position. In the Matter of Dempster, 96 N.J.A.R.2d (EDU) 120.

School board may abolish tenured grounds and building director's position and terminate his employment based on appointed fiscal monitor's directive. Wollman v. Board of Education of the City of Trenton, 96 N.J.A.R.2d (EDU) 20.

Equally entitled candidates for position of acting assistant principal and recognition was given to local school board's choice. *Chammings v. Rockaway Township Board of Education*, 93 N.J.A.R.2d (EDU) 891.

6:3-1.5 Support residencies for regularly-certified, inexperienced first-year principals

(a) Regularly-certified, inexperienced first-year principals are individuals who:

1. Acquired regular New Jersey school principal endorsements pursuant to N.J.A.C. 6:11-9.5 prior to September 1, 1989;

2. Have not previously held full-time employment as principals, vice-principals, or in other positions for which the principal endorsement is required in New Jersey or elsewhere; and

3. Have been offered employment as principals or vice-principals in a New Jersey public school district.

(b) Each district employing a regularly-certified, inexperienced first-year principal shall enter into an agreement to provide a principal residency program pursuant to N.J.A.C. 6:11-9.5, including a pre-residency experience, except that:

1. Entry requirements in N.J.A.C. 6:11-9.5 shall not apply to regularly-certified, inexperienced first-year principals;

2. Special certification evaluations as described in N.J.A.C. 6:119.5(c)5iv shall not be conducted for regularly-certified, inexperienced first-year principals, and no evaluations or recommendations concerning their certification shall be presented to the State Department of Education; and

3. As part of the support residency, the district shall require the new principal to undergo an assessment of performance at a State-approved center during the pre-residency phase. The sole purpose of this assessment shall be to provide a diagnosis of strengths and weaknesses as a basis for designing continuing education and support exercises.

(c) The State Department of Education shall monitor local districts to determine compliance with this section.

6:3-1.6 Reporting and staffing of school districts

(a) Each district board of education shall, on forms approved by the Commissioner and at specified times, submit:

1. Demographic data relative to each school;

2. Number and reasons for school dropouts;

3. Results of district and school assessment programs of pupil achievement; and

4. All required annual fiscal reports pursuant to law and rule.

(b) Teaching staff members shall be employed by the district board of education based upon the specific instructional needs of pupils of the district and each school within the district. Pursuant to N.J.A.C. 6:11, the district board of education shall provide certified personnel needed to implement a thorough and efficient system of free public schools.

(c) Each school shall be assigned the services of a full-time non-teaching principal to be responsible for administration and supervision of the school.

1. When a full-time non-teaching principal is not assigned to a school, the district board of education, upon advice of the chief school administrator, shall submit to the Commissioner for approval a plan that ensures adequate supervision of pupils and staff.

Recodified from N.J.A.C. 6:8-3.1 and 6:8-3.2 by R.1998 d.457, effective September 8, 1998.
See: 30 N.J.R. 1479(a), 30 N.J.R. 3261(b).

Case Notes

Commissioner's monitoring function under the Public School Education Act to measure and achieve a thorough and efficient education for all public school children, failed to accomplish that goal and operated largely as a self-improvement system. *Abbott by Abbott v. Burke*, 119 N.J. 287, 575 A.2d 359 (1990).

6:3-1.7 (Reserved)

6:3-1.8 Approved public elementary and secondary school summer sessions

(a) The rules for the approval of full-time public schools shall apply to all elementary and secondary summer sessions. No school summer session may be operated or approved unless it is operated by a district board of education without charge to pupils domiciled within the district.

(b) Remedial, advancement and enrichment courses may be offered to meet pupil needs. As used in this subchapter, the words below shall have the following meanings:

1. A "remedial course" is any course or subject which is a review of a course or subject previously taken for which credits or placement may be awarded upon successful completion of the course.

2. An "advanced course" is any course or subject not previously taken in an approved school program for which additional credits or advanced placement may be awarded upon successful completion of the course.

3. An "enrichment course" is any course or subject of avocational nature for which no credits are to be awarded.

(c) For pupils domiciled within the district, the district board of education shall not charge tuition for any remedial or advanced course. Reasonable tuition may be charged for enrichment courses which carry no credit and are determined by the county superintendent of schools to have no direct relationship to the curriculum.

(d) The operation of a summer session requires annual approval by the county superintendent of schools.

(e) In each public school, a member of the administrative, supervisory or teaching staff who is certified as an administrator shall be assigned the responsibilities of administration and supervision of the summer session.

(f) Teachers in summer sessions conducted by district boards of education shall possess valid certificates for subjects taught. Curriculum enrichment may involve resource persons serving for specific periods of time under the supervision of a certified administrator, supervisor or teacher.

(g) The assignment of pupils in summer session for remedial courses shall be based upon the recommendation of the principal of the school which the pupil regularly attends in accordance with policies established by the district board of education. The principal's recommendation must state in writing the name of the subject(s) which the pupil may take and the purpose for which each subject is taken.

(h) An evaluation and a description of work completed shall be included in the pupil's cumulative record and the principal of the sending school will determine the grade placement of the pupil.

(i) To receive advanced credit for a subject not previously taken, the pupil shall receive class instruction in summer session under standards equal to those during the regular term.

(j) Full-year subjects which are given for review, remediation or for other purposes not including advanced credit must be conducted for 3,600 minutes of instruction under standards equal to those during the regular term or through an established number of curricular activities as determined by the district board of education and approved by the county superintendent of schools.

(k) Credit for work taken in an approved elementary or secondary school summer session shall be transferable in the same manner as work taken in any approved elementary or secondary school.

(l) The amount of the time which a pupil has spent in receiving class instruction shall become part of his or her permanent record and shall be included whenever the record is transferred to another school.

Recodified from N.J.A.C. 6:8-9.1 through 6:8-9.4 by R.1992 d.22, effective January 6, 1992.

See: 23 N.J.R. 2908(b), 24 N.J.R. 90(b).

Amended by R.1992 d.510, effective December 21, 1992.

See: 24 N.J.R. 3039(a), 24 N.J.R. 4508(a).

Recodified from N.J.A.C. 6:8-8.1 through 6:8-8.4 by R.1998 d.457, effective September 8, 1998.

See: 30 N.J.R. 1479(a), 30 N.J.R. 3261(b).

SUBCHAPTER 2. CHIEF SCHOOL ADMINISTRATOR

6:3-2.1 Chief school administrator defined

Whenever the phrase "chief school administrator" is used throughout Title 6, it shall mean the superintendent of schools, or, if there is no superintendent, the administrative principal. The term "administrative principal" means the principal who works directly with the board of education in a district which has no position of superintendent of schools.

Case Notes

School board was authorized to rescind initial three-year contract and to renegotiate new five-year contract with superintendent. *Graham v. Kearny Board of Education*, 95 N.J.A.R.2d (EDU) 510.

Authority was vested in school board to extend employment contract with superintendent while existing contract was still in effect. *West Village Civic Club v. Manchester Board of Education*, 95 N.J.A.R.2d (EDU) 115.

Board of education could not delegate to superintendent authority to relocate classes. *Bond v. Board of Education of City of Camden*, 93 N.J.A.R.2d (EDU) 577.

Authority of board of education to hire teacher contrary to recommendation of chief school administrator. *Rotondo v. Board of Education of Carlstadt/East Rutherford Regional High School District*. 92 N.J.A.R.2d (EDU) 376.

Letter pertaining to annual insurance premium payment did not modify employment agreement with superintendent of schools. *Syvertsen v. Scotch Plains-Fanwood Board of Education*, 92 N.J.A.R.2d (EDU) 251.

6:3-2.2 Annual evaluation of tenured and nontenured chief school administrators

(a) Every district board of education shall adopt a policy and implementation procedures requiring the annual evaluation of the chief school administrator by the district board of education.

(b) The purpose of the annual evaluation shall be to:

1. Promote professional excellence and improve the skills of the chief school administrator;
2. Improve the quality of the education received by the pupils served by the public schools; and
3. Provide a basis for the review of the performance of the chief school administrator.

(c) Such policy and procedures shall be developed by each district board of education after consultation with the chief school administrator and shall include, but not be limited to:

1. A determination of roles and responsibilities for the implementation of the policy and procedures;

2. Development of a job description and evaluation criteria, based upon the district's local goals, program objectives, policies, instructional priorities, State goals, statutory requirements, and the functions, duties and responsibilities of the chief school administrator;

3. Specification of methods of data collection and reporting appropriate to the job description;

4. Provision for the preparation of an individual plan for professional growth and development based in part upon any needs identified in the evaluation, which shall be mutually developed by the district board of education and the chief school administrator; and

5. Preparation of an annual written performance report by a majority of the full membership of the district board of education and an annual summary conference between the district board of education, with a majority of the total membership of the board and the chief school administrator present.

(d) Nothing shall preclude a district board of education, at its discretion, from hiring a qualified consultant to assist or advise in the evaluation process; however, the evaluation itself is the responsibility of the district board of education.

(e) Such policy shall be distributed to the chief school administrator upon adoption. Amendments to the policy shall be distributed within 10 working days after adoption.

(f) The annual summary conference between the district board of education, with a majority of the total membership of the board and the chief school administrator present, shall be held before the written performance report is filed. The conference shall be held in private, unless the chief school administrator requests that it be held in public. The conference shall include, but not be limited to:

1. Review of the performance of the chief school administrator based upon the job description;

2. Review of the chief school administrator's progress in achieving and/or implementing the district's goals, program objectives, policies, instructional priorities, State goals and statutory requirements; and

3. Review of available indicators of pupil progress and growth toward the program objectives.

(g) The annual written performance report shall be prepared by April 30 by a majority of the total membership of the district board of education and shall include, but not be limited to:

1. Performance areas of strength;

2. Performance areas needing improvement based upon the job description and evaluation criteria set forth in (c)2 above;

3. Recommendations for professional growth and development;

4. A summary of available indicators of pupil progress and growth and a statement of how these available indicators relate to the effectiveness of the overall program and the performance of the chief school administrator; and

5. Provision for performance data which have not been included in the report prepared by the board of education to be entered into the record by the chief school administrator within 10 working days after the completion of the report.

(h) These provisions are the minimum requirements for the evaluation of chief school administrators.

(i) For purposes of this section:

1. "Chief school administrator" is defined in N.J.A.C. 6:3-2.1;

2. "Available indicators of pupil progress and growth" means the results of formal and informal assessment of pupils as defined in N.J.A.C. 6:8-6.1; and

3. "Job description" means a written specification of the functions, duties and responsibilities of the chief school administrator and the relationship of such functions, duties and responsibilities to those of the district board of education.

(j) The evaluation procedure for a nontenured chief school administrator shall be completed by April 30 each year.

(k) Each newly appointed or elected board of education member shall complete a New Jersey School Boards Association training program on the evaluation of the chief school administrator within six months of the commencement of his or her term of office pursuant to N.J.S.A. 18A:17-20.3b.

Case Notes

Offer not to disclose information about misconduct in return for tenure as "benefit" within meaning of bribery statute. *State v. Scirrotto*, 115 N.J. 38, 556 A.2d 1195 (1989).

Board of education members not legally able to serve; action to terminate superintendent. *Pijeaux v. City of Orange Board of Education*, 94 N.J.A.R.2d (EDU) 345.

County superintendent failed to file written assets and liabilities report. *Bd. of Ed., Egg Harbor Twp. v. Bd. of Ed., Greater Egg Harbor Regional High School District, Atlantic Cty.*, 7 N.J.A.R. 57 (1981), affirmed 188 N.J.Super. 92, 456 A.2d 106 (App.Div.1982), certification denied 93 N.J. 245, 460 A.2d 655 (1982).

SUBCHAPTER 3. CONDITIONS OF EMPLOYMENT FOR TEACHERS

6:3-3.1 Full-time employment of teachers

The period of time in each day required for full-time employment shall be the number of hours prescribed by the district board of education but shall not be less than four clock hours.

Case Notes

Statutory physical and mental examination requirements for teachers did not violate due process. *Hoffman v. Jannarone*, 401 F.Supp. 1095 (D.N.J.1975), affirmed in part, reversed in part and remanded 532 F.2d 746 (3rd Cir.1976).

Regulations preempt collective negotiations regarding specifically addressed and established terms and conditions of employment. *Bethlehem Twp. Bd. of Ed. v. Bethlehem Twp. Education Assn.*, 91 N.J. 38, 449 A.2d 1254 (1982).

Guidance counselor's tenure rights not violated by the addition of teaching duties. *Kartan v. North Arlington Board of Education*, 97 N.J.A.R.2d (EDU) 435.

School board's contract for crisis intervention therapists was valid. *Edison Township Education Association v. Edison Township Board of Education*, 94 N.J.A.R.2d (EDU) 301.

6:3-3.2 Duty-free lunch periods for teachers

Any teacher employed in both a morning and an afternoon session shall be entitled to a duty-free lunch period during the hours normally used for lunch periods in the school. The duty-free lunch period shall not be less than 30 minutes except in a school where the lunch period for pupils is less than 30 minutes in which case the duty-free lunch period shall not be less than the lunch period time allowed pupils.

Law Review and Journal Commentaries

Education. *Judith Nallin*, 138 N.J.L.J. Nos. 2, 62 (1994).

Case Notes

Local offices of Board Affairs and General Counsel property under Executive Superintendent's authority. *Gibson v. Newark Bd. of Ed.*, 6 N.J.A.R. 304 (1984).

SUBCHAPTER 4. SUPERVISION, OBSERVATION AND EVALUATION**6:3-4.1 Supervision of instruction: observation and evaluation of nontenured teaching staff members**

(a) For the purpose of this section, the term "observation" shall be construed to mean a visitation to an assigned work station by a certified supervisor of the local school district for the purposes of formally collecting data on the performance of a nontenured teaching staff member's assigned duties and responsibilities and of a duration appropriate to those duties and responsibilities.

1. Each of the three observations required pursuant to N.J.S.A. 18A:27-3.1 shall be conducted for a minimum duration of one class period in a secondary school, and in an elementary school for the duration of one complete subject lesson.

(b) The term "evaluation" shall be construed to mean a written evaluation prepared by the administrative or supervisory staff member who visits the work station for the purpose of observing a teaching staff member's performance of the instructional process.

(c) Each district board of education shall adopt a policy for the supervision of instruction, setting forth procedures for the observation and evaluation of all nontenured teaching staff members. Such policy shall be distributed to each teaching staff member at the beginning of his or her employment.

(d) Each policy for the supervision of instruction shall include, in addition to those observations and evaluations herein before described, an annual written evaluation of the nontenured teaching staff member's total performance as an employee of the district board of education, including, but not limited to:

1. Performance areas of strength;
2. Performance areas needing improvement based upon the job description;
3. An individual professional improvement plan developed by the supervisor and the teaching staff member; and
4. A summary of available indicators of pupil progress and growth, and a statement of how these indicators relate to the effectiveness of the overall program and the performance of the individual teaching staff member.

(e) Each of the three observations required pursuant to N.J.S.A. 18A:27-3.1 shall be followed within a reasonable period of time, but in no instance more than 10 days, by a conference between the administrative or supervisory staff member who has made the observation and written evaluation, and the nontenured teaching staff member. Both parties to such a conference will sign the written evaluation report and retain a copy for his or her records. The nontenured teaching staff member shall have the right to submit his or her written disclaimer of such evaluation within 10 days following the conference and such disclaimer shall be attached to each party's copy of the evaluation report.

(f) The purposes of this procedure for the observation and evaluation of nontenured teaching staff members shall be to identify deficiencies, extend assistance for the correction of such deficiencies, improve professional competence, provide a basis for recommendations regarding reemployment, and improve the quality of instruction received by the pupils served by the public schools.

(g) "Teaching staff member" means a member of the professional staff of any district or regional board of education, or any board of education of a county vocational school, or any educational services commission, holding office, position or employment of such character that the qualifications for such office, position or employment require him or her to hold a valid and effective standard, provisional or emergency certificate, appropriate to his or her office, position or employment, issued by the State Board of Examiners and includes a school nurse. The district chief school administrator, however, will not be evaluated pursuant to this subchapter but shall instead be evaluated pursuant to N.J.A.C. 6:3-2.2.

Case Notes

Offer not to disclose information about misconduct in return for tenure as "benefit" within meaning of bribery statute. *State v. Scirrotto*, 115 N.J. 38, 556 A.2d 1195 (1989).

Teacher who struck aggressive student whom she believed was about to harm another student was not guilty of corporal punishment. In the Matter of the Tenure Hearing of Kulp, 96 N.J.A.R.2d (EDU) 636.

Tenure status was properly denied where teacher failed to meet district teaching standards. *Getz v. North Hunterdon-Voorhees Regional District Board of Education*, 96 N.J.A.R.2d (EDU) 606.

Decision to abolish interior design program was based on declining enrollment, poor retention rate, and lack of job placement, and thus did not constitute unlawful age discrimination against teacher whose position was thereby eliminated. *Guarini v. Ocean County Vocational-Technical School District*, 96 N.J.A.R.2d (EDU) 331.

School district's complete failure to comply with constitutional mandate underlying public education compels State takeover and creation of a State-operated school district. *Contini v. Board of Education of Newark*, 96 N.J.A.R.2d (EDU) 196.

School board's termination of nontenured teacher valid if board complies with contractual termination provision and is not arbitrary or capricious. *Kufel v. Union County Vocational-Technical School District Board of Education*, 96 N.J.A.R.2d (EDU) 14.

There was enforceable contract for employment of non-tenured teacher, but it was violated by teacher's lack of proper certification. *Delgado v. Union City Board of Education*, 93 N.J.A.R.2d (EDU) 744.

Refusal to rehire nontenured teacher was within discretion of board of education and not discriminatory. *Costanzo v. Board of Education of City of Rahway*, 93 N.J.A.R.2d (EDU) 654.

Nontenured teacher not renewed despite chief school administrator's recommendation; authority of school board. *Stevens v. Board of Education of Township of Spotswood*, 93 N.J.A.R.2d (EDU) 453.

Evidence supported findings that certified Title I teachers were improperly compensated, assigned titles as a subterfuge to avoid pay parity and terminated under false rationale to avoid tenure acquisition. *Blue v. Bd. of Ed., Jersey City*, 2 N.J.A.R. 206 (1980).

6:3-4.2 Procedure for appearance of nontenured teaching staff members before a district board of education upon receipt of a notice of nonreemployment

(a) Whenever a nontenured teaching staff member has requested in writing and has received a written statement of reasons for nonreemployment pursuant to N.J.S.A. 18A:27-3.2, he or she may request in writing an informal appearance before the district board of education. Such written request must be submitted to the board within 10 calendar days of receipt of the board's statement of reasons.

(b) Such an informal appearance shall be scheduled within 30 calendar days from receipt of the board's statement of reasons.

(c) Under the circumstances described in this section, a nontenured teaching staff member's appearance before the board shall not be an adversary proceeding. The purpose of such an appearance shall be to permit the staff member to convince the members of the board to offer reemployment.

(d) Each district board shall exercise discretion in determining a reasonable length of time of the proceeding, depending upon the specific circumstances in each instance.

(e) Each district board shall provide adequate written notice to the employee regarding the date and time of the informal appearance.

(f) The nontenured teaching staff member may be represented by counsel or one individual of his or her own choosing.

(g) The staff member may present witnesses on his or her behalf. Such witnesses need not present testimony under oath and shall not be cross-examined by the board. Witnesses shall be called into the meeting to address the board one at a time and shall be excused from the meeting after making their statements.

(h) The proceeding of an informal appearance before the district board as described herein may be conducted pursuant to N.J.S.A. 10:4-12(b)(8).

(i) Within three days following the informal appearance, the board shall notify the affected teaching staff member, in writing, of its final determination. Such notification may be delegated by the board to its superintendent or board secretary.

Case Notes

Nontenured teacher's failure to allege that termination violated constitutional or legislatively-conferred rights justifies summary decision for school board. *Kufel v. Union County Vocational-Technical School District*, 96 N.J.A.R.2d (EDU) 446.

6:3-4.3 Evaluation of tenured teaching staff members

(a) Every district board of education shall adopt policies and procedures requiring the annual evaluation of all tenured teaching staff members by appropriately certified personnel (see N.J.S.A. 18A:1-1; N.J.A.C. 6:11-9.3).

(b) The purpose of the annual evaluation shall be to:

1. Promote professional excellence and improve the skills of teaching staff members;
2. Improve pupil learning and growth; and
3. Provide a basis for the review of performance of tenured teaching staff members.

(c) The policies and procedures shall be developed under the direction of the district's chief school administrator in consultation with tenured teaching staff members and shall include, but not be limited to:

1. Roles and responsibilities for implementation of the policies and procedures;

2. Development of job descriptions and evaluation criteria based upon district goals, program objectives and instructional priorities;

3. Methods of data collection and reporting appropriate to the job description including, but not limited to, observation of classroom instruction;

4. Observation conference(s) between the supervisor and the teaching staff member;

5. Provision for the use of additional appropriately certified personnel where it is deemed advisable;

6. Preparation of individual professional improvement plans; and

7. Preparation of an annual written performance report by the supervisor and an annual summary conference between the supervisor and the teaching staff member.

(d) These policies shall be distributed to reach tenured teaching staff members no later than October 1. Amendments to the policy shall be distributed within 10 working days after adoption.

(e) The annual summary conference between supervisors and teaching staff members shall be held before the written performance report is filed. The conference shall include, but not be limited to:

1. Review of the performance of the teaching staff member based upon the job description;

2. Review of the teaching staff member's progress toward the objectives of the individual professional improvement plan developed at the previous annual conference;

3. Review of available indicators of pupil progress and growth toward the program objectives; and

4. Review of the annual written performance report and the signing of said report within five working days of the review.

(f) The annual written performance report shall be prepared by a certified supervisor who has participated in the evaluation of the teaching staff member and shall include, but not be limited to:

1. Performance areas of strength;

2. Performance areas needing improvement based upon the job description;

3. An individual professional improvement plan developed by the supervisor and the teaching staff member;

4. A summary of available indicators of pupil progress and growth, and in statement of how these indicators relate to the effectiveness of the overall program and the performance of the individual teaching staff member; and

5. Provisions for performance data which have not been included in the report prepared by the supervisor to be entered into the record by the evaluatee within 10 working days after the signing of the report.

(g) These provisions are the minimum requirements for the evaluation of tenured teaching staff members.

(h) For the purposes of this section:

1. "Appropriately certified personnel" means personnel qualified to perform duties of supervision which includes the superintendent, assistant superintendent, principals, vice-principals, and supervisors of instruction who hold the appropriate certificate and who are designated by the board to supervise instruction;

2. "Indicators of pupil progress and growth" means the results of formal and informal assessment of pupils as defined in N.J.A.C. 6:8-6.1;

3. "Individual professional improvement plan" is a written statement of actions developed by the supervisor and the teaching staff member to correct deficiencies or to continue professional growth, timelines for their implementation, and the responsibilities of the individual teaching staff member and the district for implementing the plan;

4. "Job description" means a written specification of the function of the position, duties and responsibilities, the extent and limits of authority, and work relationships within and outside the school and district;

5. "Observation conference" means a discussion between supervisor and teaching staff member to review a written report of the performance data collected in a formal observation and its implications for the teaching staff member's annual evaluation;

6. "Observation" means a visitation to an assigned work station by a certified supervisor for the purpose of formally collecting data on the performance of a teaching staff member's assigned duties and responsibilities and of a duration appropriate to same;

7. "Performance report" means a written appraisal of the teaching staff member's performance prepared by an appropriately certified supervisor;

8. "Supervisor" means any appropriately certified individual assigned with the responsibility for the direction and guidance of the work of teaching staff members; and

9. "Teaching staff member" means a member of the professional staff of any district or regional board of education, or any board of education of a county vocational school, holding office, position or employment of such character that the qualifications, for such office, position or employment, require him or her to hold a valid and effective standard, provisional or emergency certificate, appropriate to his or her office, position or employment, issued by the State Board of Examiners and includes a school nurse. The district chief school administrator, however, will not be evaluated pursuant to this section, but shall instead be evaluated pursuant to N.J.A.C. 6:3-2.2.

Case Notes

Board of education's decision to withhold principal's salary increment due to his excessive absenteeism was not related predominately to evaluation of principal's performance, and thus principal's appeal should be through arbitration, and not to Commissioner of Department of Education. *Edison Tp. Bd. of Educ., Middlesex County v. Edison Tp. Principals and Sup'rs Ass'n*, 304 N.J.Super. 459, 701 A.2d 459 (A.D. 1997).

Tenure entitlement to guidance counselor position due to assignment of guidance functions affirmed. *Dudzinski v. Board of Education of the Borough of Franklin, Sussex County*, 97 N.J.A.R.2d (EDU) 531.

School board unable to unilaterally reduce tenured teaching employee's salary. *Adams v. Board of Education of the Ocean Gate School District, Ocean County*, 97 N.J.A.R.2d (EDU) 528.

Secretary's tenure rights violated due to reduction in salary while functions remained unabated. *Bove v. Board of Education of the Township of Frankford, Sussex County*, 97 N.J.A.R.2d (EDU) 523.

School board's mistaken salary increase not remediable by reducing tenured staff's compensation during next school term. *DeLyon v. Board of Education of the Borough of Old Tappan*, 97 N.J.A.R.2d (EDU) 499.

District's authority to withhold salary increments due to below standard performance affirmed. *Fogarty, et al. v. State Operated School District of the City of Jersey City, Hudson County*, 97 N.J.A.R.2d (EDU) 439.

Teacher's arrest for possession of marijuana constituted conduct unbecoming a teacher and was sufficient to warrant dismissal. In the Matter of the Tenure Hearing *McIntyre*, 96 N.J.A.R.2d (EDU) 719.

Testimony of three students was insufficient to prove corporal punishment charges against physical education teacher, given teacher's previously unblemished record. In the Matter of the Tenure Hearing of *Quinones*, 96 N.J.A.R.2d (EDU) 649.

Tenured teacher who broke up fight between students by physically placing one student in chair violated ban against corporal punishment, and thus would have increment and salary withheld. In the Matter of the Tenure Hearing of *MacDowell*, 96 N.J.A.R.2d (EDU) 644.

Tenured teacher properly suspended for sexually harassing co-worker. In the Matter of the Tenure Hearing of *Paul Ash*, 96 N.J.A.R.2d (EDU) 442.

Teacher's consistent failure to effectively discipline and teach students justifies removal. In the Matter of the Tenure Hearing of *Loria*, 96 N.J.A.R.2d (EDU) 379.

Denial of salary increment upheld when teacher failed to properly supervise students. *Backer v. Roxbury Township Board of Education*, 96 N.J.A.R.2d (EDU) 349.

Withholding of employment and adjustment increments justified for teacher with less than satisfactory evaluations. *Rago v. State-Operated School District of the City of Jersey City*, 96 N.J.A.R.2d (EDU) 31.

Commissioner of Education lacks jurisdiction to hear teacher's re-employment and salary dispute with school board. *Picot v. Warren County Vocational-Technical School District*, 96 N.J.A.R.2d (EDU) 27.

Commissioner has jurisdiction to decide scope of negotiability issue pertaining to annual evaluation deadline. *Willingboro Administrators Assn. v. Willingboro Education Assn.*, 1 N.J.A.R. 327 (1980).

6:3-4A.1 Promotion, remediation, and graduation procedures

(a) District boards of education shall adopt policies and procedures for:

1. Pupil promotion, related to district goals, objectives, and pupil proficiency;
2. Remediation opportunities for pupils to satisfy any failed proficiencies;
3. High school graduation requirements, pursuant to law and rule, which are consistent with the achievement of State and district goals, objectives, and pupil proficiency with particular reference to reading, writing, and mathematics skills as specified in (b), (c), (d), and (e) below;
4. The exemption of handicapped pupils from the high school graduation requirements, pursuant to N.J.A.C. 6:28-3.6 and 4.4, 6:39-1.3(e), and (b)6 below.
5. Annual notification to pupils and parent(s) or guardian(s) of the policies and procedures for pupil promotion, remediation, and the high school graduation requirements;
6. Notification to each entering ninth grade pupil and his or her parent(s) or guardian(s) of all State and local high school graduation requirements. In addition, at the beginning of each course required for graduation, each district board of education shall distribute a list of proficiencies required for successful completion of that course to all pupils and their parent(s) or guardian(s). These proficiencies lists shall include, but not be limited to, the core course proficiencies identified by the Department of Education in (c)2iii below;
7. Notification to each pupil and parent(s) or guardian(s) at appropriate times during the school year of the pupil's progress in meeting the promotion, course proficiencies and the high school graduation requirements;
8. Immediate consultation, not longer than 10 school days after the local school district becomes aware of the pupil's deficiencies, with the pupil's parent(s) or guardian(s);
9. Appeal of promotion/retention decision by parent(s) or guardian(s) and adult pupils; and
10. Participation of parent(s) or guardian(s), teachers, and students, where appropriate, in the development of pupil promotion and remediation policies.

(b) District boards of education shall adopt policies and procedures for high school graduation of all pupils, pursuant to law and rule, which shall include, but not be limited to, performing at or above the State minimum levels of pupil proficiency on the State-mandated High School Proficiency Test in reading, writing, and mathematics skills.

SUBCHAPTER 4A. PROMOTION AND HIGH SCHOOL GRADUATION REQUIREMENTS AND PROCEDURES

Subchapter Historical Note

Subchapter 4A, Promotion and High School Graduation Procedures, was recodified from N.J.A.C. 6:8-7.1 by R.1998 d.457, effective September 8, 1998. See: 30 N.J.R. 1479(a), 30 N.J.R. 3261(b).

1. Pupils in grades 9 and 10 who perform below State minimum levels of pupil proficiency on one or more areas of the State-mandated Early Warning Test and pupils in grades 11 and 12 who perform below State minimum levels of pupil proficiency on one or more areas of the State-mandated High School Proficiency Test shall be provided with an individual comprehensive assessment, as specified in N.J.A.C. 6:8-3.1. Based on the individual comprehensive assessment, the pupil shall receive the necessary services to remedy the identified deficiencies. Such services shall include, but not be limited to, the development and implementation of an Individual Student Improvement Plan. This individual plan may be carried out through the regular program or through an extended school day, extended school week, or extended school year. Comprehensive pupil assessment and re-evaluation of the individual plans shall take place at least once each year until all identified deficiencies have been remediated.

2. Each district board of education shall develop procedures for the development of Individual Student Improvement Plans. These procedures shall include, but not be limited to, those procedures set forth in N.J.A.C. 6:8-3.2.

3. Pupils who perform below State levels of pupil proficiency on one or more areas of the State-mandated Early Warning Test or the High School Proficiency Test shall be provided an opportunity to demonstrate mastery in each academic year.

4. Pupils who perform below State minimum levels of pupil proficiency on one or more areas of the State-mandated High School Proficiency Test and have satisfied all other State and local graduation requirements shall be provided an additional evaluation during the twelfth year which is based on the Individual Student Improvement Plan required under (b)1 above. This evaluation, the Special Review Assessment, may include, but is not limited to:

- i. Performance on State tests, including all retests;
- ii. Performance on locally selected tests;

iii. Performance on course work;

iv. Practical demonstrations of specific skill mastery which occur either in or outside of school, but which are not part of regular course work;

v. Formal interview with the parent(s);

vi. Formal interview with the teaching staff;

vii. Guidance counselor and/or psychologist review, as appropriate;

viii. Visual, auditory, and/or medical data, as appropriate;

ix. Examination of credit and curriculum performance; and

x. Examination of pupil proficiencies in other areas.

5. The findings of the evaluation required in (b)4 above shall be recorded on a Special Review Assessment Student Profile Form developed by the Department of Education. An independent evaluation of these data must be made by a local district review panel comprised of at least three teaching staff members not currently instructing the pupil. On the basis of the evidence listed in (b)4 above and the recommendations of the review panel, the building principal and the chief school administrator may certify satisfactory attainment of the State minimum levels of pupil proficiency in reading, writing, and/or mathematics. Whether or not such certification occurs, the district must retain the Student Profile Form, including all attachments, for one year after the pupil's class graduates. If such certification occurs, the Special Review Assessment Student Profile Form must be forwarded to the county superintendent of schools by March 1 of the regularly scheduled graduation year. Based upon the documentation provided by the local district, the county superintendent of schools must certify whether or not the State minimum levels of pupil proficiency have been achieved and notify, in writing, the chief school administrator of this decision.

6. An educationally handicapped pupil must meet all State and local high school graduation requirements in order to receive a State-endorsed high school diploma, pursuant to the provisions established under N.J.A.C. 6:28.

i. A handicapped pupil who has not been exempted from the proficiencies or has performed below the State minimum levels of pupil proficiency on one or more areas of the State-mandated High School Proficiency Test shall participate in the Special Review Assessment.

7. All pupils of limited English proficiency must satisfy requirements for high school graduation in accordance with the provisions of this section except:

i. Pupils of limited English proficiency who enter New Jersey schools in grade nine or later may demonstrate that they have attained State minimum levels of proficiency through the Special Review Assessment in their native language, and

ii. Pupils of limited English proficiency who enter New Jersey schools in grade nine or later and who demonstrate that they have attained State minimum levels of proficiency through the Special Review Assessment in their native language must take the Maculaitis Assessment Program and attain the passing level of fluency of 133 raw score points to be eligible for a State-endorsed high school diploma.

8. Any out-of-school youth or adult age 18 or older who has otherwise met all State and local graduation requirements, but has failed to pass the State-mandated High School Proficiency Test may return at times which have been scheduled and publicly announced by the district for the purpose of taking the necessary test. Upon certification of passing the test, a State-endorsed diploma will be granted by the high school of record.

(c) Minimum high school graduation requirements include the following:

1. District boards of education providing high school diplomas, in cooperation with any sending district(s), shall adopt policies and procedures for defining minimum high school curriculum requirements and locally determined proficiencies, including the Statewide core course proficiencies therein, pursuant to law and rule, which shall include, but not be limited to:

i. Requiring the successful completion of a program of study in grades nine through 12, effective with the September, 1987 grade nine class, which shall include, but not be limited to:

(1) One credit year of English for each year of enrollment, up to four credit years;

(2) Two credit years of mathematics, effective through August, 1990; three credit years of mathematics, effective with the September, 1990 grade nine class;

(3) Two credit years of social studies/United States history, as required by N.J.S.A. 18A:35-1 through August 1988, and one additional credit year of world history/cultures, effective with the September, 1988 grade nine class;

(4) One credit year of natural or physical science through August, 1989; two credit years of natural or physical science, effective with the September, 1989 grade nine class;

(5) One credit year of physical education, health and safety for each year of enrollment, as required by N.J.S.A. 18A:35-7;

(6) One credit year of fine, practical, and/or performing arts;

(7) One-half credit year of career education. This requirement may be satisfied through the alternative methods of infusion into existing courses, course equivalents, or a career education course. For credit to be awarded, career education shall be offered as a course, as specified in (c)1ii below or in (d) below.

ii. Pupils may meet the curriculum requirements set forth in (c)1i above through demonstration of mastery of Statewide core and locally determined course proficiencies in each of the above curriculum areas or through program completion procedures noted in (d) below. This determination shall be made by the district board of education.

2. Pupil proficiencies in (c)1 above shall be developed as follows:

i. The Commissioner shall recommend to the State Board of Education uniform Statewide core course proficiencies for those curriculum areas mandated by the State Board for high school graduation and for foreign languages. Upon the receipt of the Commissioner's recommendation, the State Board of Education shall review and approve by resolution the core course proficiencies. The core course proficiencies shall be developed and recommended to the Commissioner through a collaborative process which shall include:

(1) Curriculum convocations;

(2) Curriculum panels, composed of outstanding educators and others; and

(3) Local school district review.

ii. Core course proficiencies shall be developed within the following timelines for the respective curriculum areas:

(1) Mathematics, beginning August 1, 1989 and concluding October 1, 1990;

(2) Natural or physical science, beginning August 1, 1989 and concluding October 1, 1990;

(3) English, beginning August 1, 1990 and concluding October 1, 1991;

(4) Social studies, beginning August 1, 1990 and concluding October 1, 1991;

(5) Foreign languages, beginning August 1, 1991 and concluding October 1, 1992;

(6) Fine, practical and/or performing arts, beginning August 1, 1992 and concluding October 1, 1993;

(7) Career education, beginning August 1, 1992 and concluding October 1, 1993; and

(8) Health, safety and physical education, beginning August 1, 1993 and concluding October 1, 1994.

iii. For each of those courses mandated by the State Board of Education, district boards of education shall establish course proficiencies, including, but not limited to, the Statewide core proficiencies in the following curriculum areas:

(1) Mathematics by September 1, 1991;

(2) Natural or physical science by September 1, 1991;

(3) English by September 1, 1992;

(4) Social studies by September 1, 1992;

(5) Foreign languages by September 1, 1993;

(6) Fine, practical, and/or performing arts by September 1, 1994;

(7) Career education by September 1, 1994; and

(8) Health, safety and physical education by September 1, 1995.

iv. District boards of education shall establish course proficiencies for each course in all curriculum areas. Upon approval of these proficiencies by the district board of education, all students shall demonstrate mastery through specified methods and instruments of assessment in all courses as a condition of graduation.

v. The Statewide core course proficiencies in the content areas set forth in (c)2ii above shall be reviewed by panels of outstanding local educators convened by the Commissioner every five years following their establishment. Based upon the recommendations of the panel, the Commissioner shall consider the revision of the core course proficiencies.

(d) Subject to approval of the State Board of Education:

1. Each district board of education shall establish graduation requirements on the basis of either course credits, program completion, or a combination of course credits and program completion.

i. Course credit requirements shall be established as follows:

(1) Each four-year high school shall establish a minimum number of not less than 92 credits to be required for graduation, effective with the September, 1987 grade nine class; not less than 110 credits effective with the September, 1988 grade nine class.

(2) Each three-year high school shall establish a minimum number of not less than 69 credits to be completed in grades 10 to 12 inclusive, effective with the September, 1987 grade 10 class; not less than 82.5 credits effective with the September, 1989 grade 10 class.

(3) Six-year schools may base their graduation requirements on formal completion of grades nine to 12 or 10 to 12 within the credit limits established for four-year or three-year high schools, respectively.

(4) Credit toward graduation shall be awarded by the following method:

(A) Credit shall be assigned on the same basis to all high school courses offered by the district board of education. One credit is awarded for a class period of instruction which meets one time per week during the school year. A class period of instruction is a minimum of 40 minutes. A credit year is awarded for a class period of instruction which meets daily for the school year and equals five credits.

(B) Credit may be assigned by each district board of education for curricular activities, as defined in N.J.A.C. 6:27-1.13.

(C) Approved cooperative education program credits shall not exceed 15 credits per year.

ii. Credit year requirements set forth in (c) above may be met in whole or in part through program completion as follows:

(1) District boards of education may determine and establish a set number of curricular activities or programs for promotion and graduation purposes.

(2) Programs shall be planned for individuals and/or a group based on specific instructional objectives.

(3) The principal shall certify completion of curricular activities or programs based upon specified instructional objectives.

(4) Group programs based on specific instructional objectives shall be approved in the same manner as other approved courses. Individual programs shall be on file in the local district and subject to review by the Commissioner or his or her designee.

2. District boards of education shall establish pupil attendance requirements appropriate to each of the particular educational programs.

(e) Successful completion of the requirements set forth in (b), (c), and (d) above and any local requirements shall be required as conditions for awarding a State-endorsed diploma, except as provided for seniors entering military or naval service, pursuant to N.J.S.A. 18A:36-17, and handicapped pupils exempted from the requirements. No district board of education may issue a high school diploma without State endorsement.

(f) Review and reporting requirements include the following:

1. Annually, not later than September 30, the chief school administrator shall report at a public meeting to the district board of education and the Commissioner of Education the number of pupils graduated and the number of pupils denied graduation from the prior 12th grade class based on the provision of this chapter. The chief school administrator shall include in the annual report the number of pupils graduated under the special education and special review assessment procedures noted in this subsection;

2. The Commissioner of Education, in accordance with law and rule, shall report to the State Board of Education on the status and outcomes of the promotion and graduation procedures;

3. District boards of education shall submit their graduation requirements on forms provided by the Department of Education to the Commissioner or his or her designee. District boards of education shall update this filed copy as their graduation policies are revised;

4. The Commissioner or his or her designee shall review and approve the district board of education policies and procedures for pupil promotion, remediation, and high school graduation requirements; and

5. The Commissioner or his or her designee shall monitor the implementation of the promotion, remediation, and high school graduation policies and procedures.

Amended by R.1987 d.185, effective April 20, 1987.

See: 19 N.J.R. 4(a), 19 N.J.R. 632(b).

Text added in (c)1i(3) "United States"; text added in (c)1i(7) "This requirement may . . ." and deleted "until August 1988".

Amended by R.1987 d.186, effective April 20, 1987.

See: 19 N.J.R. 4(a), 19 N.J.R. 633(a).

Deleted "Until August, 1988" from (c)1i(6).

Amended by R.1987 d.358, effective September 8, 1987.

See: 19 N.J.R. 1033(b), 19 N.J.R. 1641(c).

Added (a)4; deleted old text from (a)6 and substituted new text.

Amended by R.1989 d.240, effective May 1, 1989.

See: 21 N.J.R. 235(a), 21 N.J.R. 1134(a).

Subsection (c), significantly expanded to include development of Statewide core course proficiencies.

Amended by R.1992 d.22, effective January 6, 1992.

See: 23 N.J.R. 2908(b), 24 N.J.R. 90(b).

Added reference to the State-mandated Early Warning Test; added new (b)7, regarding requirements for pupils of limited English proficiency and recodified 7 to 8.

Amended by R.1998 d.457, effective September 8, 1998.

See: 30 N.J.R. 1479(a), 30 N.J.R. 3261(b).

In (b), changed N.J.A.C. references throughout; and in (f), deleted former 6.

SUBCHAPTER 5. SENIORITY

6:3-5.1 Standards for determining seniority

(a) The word "employment" for purposes of these standards shall also be held to include "office" and "position."

(b) Seniority, pursuant to N.J.S.A. 18A:29-9 et seq., shall be determined according to the number of academic or calendar years of employment, or fraction thereof, as the case may be, in the school district in specific categories as hereinafter provided. The periods of unpaid absences not exceeding 30 calendar days aggregate in one academic or calendar year, leaves of absence at full or partial pay and unpaid absences granted for study or research shall be credited toward seniority. All other unpaid absences or leaves of absence shall not receive seniority credit.

(c) In computing length of service for seniority purposes, full recognition shall be given to previous years of service within the district and the time of service in or with the military or naval forces of the United States or this State, pursuant to the provisions of N.J.S.A. 18A:28-12.

(d) Employment in the district prior to the adoption of these standards shall be counted in determining seniority.

(e) The holder of an emergency certificate shall not be entitled to seniority rights but, when he or she becomes the holder of a standard certificate, the years of employment under the emergency certificate shall count toward seniority under the standard certificate. Upon acquisition of a standard certificate, any periods of service under a provisional certificate shall also be counted toward seniority.

(f) Whenever a person shall hold employment simultaneously under two or more subject area endorsements or in two or more categories, seniority shall be counted in all subject area endorsements and categories in which he or she is or has been employed. For purposes of calculating seniority entitlement, there shall be no distinction between academic years and calendar years.

(g) Where the title of any employment is not properly descriptive of the duties performed, the holder thereof shall be placed in a category in accordance with the duties performed and not by title. Whenever the title of any employment shall not be found in the certification rules or in these rules, the holder of the employment shall be classified as nearly as may be according to the duties performed, pursuant to the provisions of N.J.A.C. 6:11-3.3.

(h) Whenever a person shall move from or revert to a category, all periods of employment shall be credited toward his or her seniority in any or all categories in which he or she previously held employment.

(i) Whenever any person's particular employment shall be abolished in a category, he or she shall be given that employment in the same category to which he or she is

entitled by seniority. If he or she shall have insufficient seniority for employment in the same category, he or she shall revert to the category in which he or she held employment prior to his or her employment in the same category and shall be placed and remain upon the preferred eligible list of the category from which he or she reverted until a vacancy shall occur in such category to which his or her seniority entitles him or her.

(j) If he or she shall have insufficient seniority in the category to which he or she shall revert, he or she shall, in like manner, revert to the next category in which he or she held employment immediately prior to his or her employment in the category to which he or she shall have reverted, and shall be placed and remain upon the preferred eligible list of the next preceding category, and so forth, until he or she shall have been employed or placed upon all the preferred eligible lists of the categories in which he or she formerly held employment in the school district.

(k) In the event of his or her employment in some category to which he or she shall revert, he or she shall remain upon all the preferred eligible lists of the categories from which he or she shall have reverted, and shall be entitled to employment in any one or more such categories whenever a vacancy occurs to which his or her seniority entitles him or her.

(l) The following shall be deemed to be specific categories, not necessarily numbered in order of precedence:

1. Superintendent of schools;
2. Assistant superintendent;
 - i. Each assistant superintendency shall be a separate category; and
 - ii. District boards of education shall adopt a job description for each assistant superintendent position which shall set forth qualifications and endorsements for such position;
3. Director;
 - i. Each director position shall be a separate category; and
 - ii. District boards of education shall adopt job descriptions for each director position which sets forth the qualifications and endorsements for such position;
4. High school principal;
5. Adult high school principal;
6. Alternative school principal;
7. Vocational school principal;
8. Junior high school principal;
9. Elementary principal;
10. Supervisor;

i. Each supervisory title shall be a separate category; and

ii. District boards of education shall adopt a job description for each supervisory position which sets forth the qualifications and specific endorsements required for such position;

11. High school vice-principal or assistant principal;
12. Adult high school vice-principal or assistant principal;
13. Alternative school vice-principal or assistant principal;
14. Junior high school vice-principal or assistant principal;
15. Elementary school vice-principal or assistant principal;
16. Vocational school vice-principal or assistant principal;
17. Secondary. The word "secondary" shall include grades nine through 12 in all high schools, grades seven and eight in junior high schools and grades seven and eight in elementary schools having departmental instruction;

i. Any person holding an instructional certificate with subject area endorsements shall have seniority within the secondary category only in such subject area endorsement(s) under which he or she has actually served;

ii. Whenever a person shall be reassigned from one subject area endorsement to another, all periods of employment in his or her new assignment shall be credited toward his or her seniority in all subject area endorsements in which he or she previously held employment;

iii. Any person employed at the secondary level in a position requiring an educational services certificate or a special subject field endorsement shall acquire seniority only in the secondary category and only for the period of actual service under such educational services certificate or special subject field endorsement; and

iv. Persons employed and providing services on a district-wide basis under a special subject field endorsement or an educational services certificate shall acquire seniority on a district-wide basis;

18. Elementary. The word "elementary" shall include kindergarten, grades one through six and grades seven and eight without departmental instruction;

i. District boards of education who make a determination to reorganize instruction at grades seven and eight pursuant to these rules must do so by adoption of a formal resolution setting forth the reasons for such reorganization;

Service as substitute teacher could not provide day need to attain tenure. *Mills v. Piscataway Township Board of Education*, 92 N.J.A.R.2d (EDU) 372.

Leave of absence following disability counted for purposes of tenure. *Kletzkyn v. Board of Education of Borough of Spotswood*, 92 N.J.A.R.2d (EDU) 367.

School district did not have obligation to notify teacher who resigned of possible positions to which he might return following reduction in force. *Murray v. Northern Highlands Regional High School Board of Education*, 92 N.J.A.R.2d (EDU) 335, supplemented 96 N.J.A.R.2d (EDU) 351.

Back pay award to teachers whose positions were eliminated during reduction in force; mitigation. *West Orange Supplemental Instructors Association, et al., v. Board of Education of Township of West Orange*, 92 N.J.A.R.2d (EDU) 287.

Tenure rights violated in reduction in force. *Brown v. Board of Education of Township of Edison*, 92 N.J.A.R.2d (EDU) 271.

Employment reduced from full to part-time; no violation of teacher's seniority rights. *Polo v. Board of Education of Vocational Schools of County of Bergen*, 92 N.J.A.R.2d (EDU) 230.

Seniority of academic year teacher; services rendered prior to start of academic year. *Polo v. Board of Education of Vocational Schools of County of Bergen*, 92 N.J.A.R.2d (EDU) 230.

Tenure rights; teaching for 12 years under inappropriate certificate. *McAneny v. Board of Education of School District of Chatham*, 92 N.J.A.R.2d (EDU) 208.

Contracting for speech correctionist services; tenured position abolished. *Impey v. Board of Education of Borough of Shrewsbury*, 92 N.J.A.R.2d (EDU) 197.

Cooperative education coordinator; acquisition of tenure. *Gerdes v. Spotswood Boro Board of Education*, 92 N.J.A.R.2d (EDU) 168.

Instructional supervisor position abolished; seniority rights to other administrative positions. *Kish v. Board of Education of Borough of Elmwood Park, Bergen County*, 92 N.J.A.R.2d (EDU) 134.

Suspension of tenured teacher; involuntary sick leave placement without medical justification. *Robert v. Clinton Township Board of Education*, 92 N.J.A.R.2d (EDU) 123.

Title change did not violate tenure or seniority rights. *Kornberg v. Board of Education of Township of North Bergen*, 92 N.J.A.R.2d (EDU) 120.

Tenured guidance counselor; right to program coordinator position. *Paszamant, Evans and Ralph v. Highland Park Borough Board of Education*, 92 N.J.A.R.2d (EDU) 103.

Supervisor's tenure rights; local determination of job duties; abandonment of rights. *Ralph v. Highland Park Borough of Education*, 92 N.J.A.R.2d (EDU) 93.

Tenure; three-years' employment. *Blossom S. Nissman v. Board of Education of the Township of Long Beach Island*, 92 N.J.A.R.2d (EDU) 71.

Seniority rights; teacher did not accrue credit under nursery school endorsement despite teaching home economics to pre-kindergarten children. *Miller v. Hoboken Board of Education*, 92 N.J.A.R.2d (EDU) 21.

Teacher's entitlement to full-time vacancy after having been subject to reduction enforced. *Benson v. Board of Education of Borough of Rockaway, Morris County*, 92 N.J.A.R.2d (EDU) 15.

Petition of tenured teacher alleging improper assignment was improperly dismissed for failure to state a cause of action. *Morgan v. Board of Educ. of the Tp. of Wayne, Passaic County*, 91 N.J.A.R.2d (EDU) 122.

Supervisory titles were separate categories under the seniority regulations. *Weinstein v. Township of Old Bridge, Middlesex County*, 91 N.J.A.R.2d (EDU) 102.

Tenured supplemental teacher did not acquire tenure as supervisor by performing supervisory duties. *Pirozek v. Board of Educ. of the Tp. of Montville, Morris County*, 91 N.J.A.R.2d (EDU) 95.

Supervisors whose positions were abolished; only "bumping" rights were to nonsupervisory positions. *Van Tyke v. State-Operated School Dist. of the City of Jersey City*, 91 N.J.A.R.2d (EDU) 43.

Running of time for tenure consideration commences only upon attainment of necessary certificate for position held. *Fischbach v. Bd. of Ed., North Bergen*, 7 N.J.A.R. 191 (1983), affirmed per curiam Docket No. A-5947-83 (App.Div.1983).

Tenured teacher with seniority entitled to full-time position when school board chooses to create during reduction in force two part-time positions more than equivalent to one full-time position. *Klinger v. Bd. of Ed., Cranbury Twp., Middlesex Cty.*, 7 N.J.A.R. 111 (1981), affirmed 190 N.J.Super. 354, 463 A.2d 948, certification denied 93 N.J. 277, 460 A.2d 678 (App.Div.1982).

Transfer of middle school principal to high school vice principal position proper. *Howley v. Ewing Twp. Bd. of Ed.*, 6 N.J.A.R. 509 (1982).

Speech correctionist's claim of tenure rights violation in transfer to teacher of the handicapped. *Reeves v. Bd. of Ed., Westwood Regional School District, Bergen Cty.*, 4 N.J.A.R. 445 (1981).

Reduction of tenured child study team members to part-time employees and transfer of some of their functions to specially contracted team violates members' tenure rights. *Cochran v. Watchung Hills Regional High School Bd. of Ed.*, 4 N.J.A.R. 163 (1983).

Issue of withholding of chairmanship stipend from department chairman without position tenure, one year prior to his retirement, is outside of Commissioner's jurisdiction. *Taylor v. Bd. of Ed., Westfield, Union Cty.*, 2 N.J.A.R. 350 (1980).

Supplemental instruction required under New Jersey law if needed due to demonstrated educational handicaps. *Hamilton Twp. Supplemental Teachers Assn. v. Bd. of Ed., Hamilton Twp., Mercer Cty.*, 2 N.J.A.R. 294 (1979), affirmed 180 N.J.Super. 321 (App.Div.1981), affirmed 90 N.J. 63 (1982).

Seniority rules irrelevant to subjects of rank or comparable positions in determination of legality of involuntary transfers. *Stranzl v. Bd. of Ed., Paterson, Passaic Cty.*, 2 N.J.A.R. 16 (1980).

Guidance counselor, upon reduction to half-time positions, possessed no absolute legal right to transfer out-of-category to any social studies teaching position in which she had no tenure. *Perry v. Bd. of Ed., Glen Rock Boro., Bergen Cty.*, 1 N.J.A.R. 300 (1981).

SUBCHAPTER 6. PUPIL RECORDS

6:3-6.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

"Access" means the right to view, to make notes, and/or to have a reproduction of the pupil record made.

"Adult pupil" means a person who is at least 18 years of age, or is attending an institution of postsecondary education, or is an emancipated minor.

“Parent” means the natural parent(s) or legal guardian(s), foster parent(s) or parent surrogate(s) of a pupil. Where parents are separated or divorced, “parent” means the person or agency who has legal custody of the pupil, as well as the natural or adoptive parents of the pupil, provided such parental rights have not been terminated by a court of appropriate jurisdiction.

“Parent surrogate(s)” means an individual or individuals approved by the district board of education in accordance with N.J.A.C. 6:28-2.2 to act on behalf of a pupil whose parents are not available to assure the pupil’s educational rights.

“Pupil” means a person who is or was enrolled in a public school.

“Pupil record” means information related to an individual pupil gathered within or outside the school system and maintained within the school system, regardless of the physical form in which it is maintained. Essential in this definition is the idea that any information which is maintained for the purpose of second party review is considered a pupil record. Therefore, information recorded by any certified school personnel solely as a memory aid, not for the use of a second party, is excluded from this definition.

“Student information directory” means a publication of a district board of education which includes the following information relating to a pupil: the student’s name, address, telephone number, grade level, date and place of birth, dates of attendance, major field of study, participation in officially recognized activities, weight and height relating to athletic team membership, degrees, awards, the most recent educational agency attended by the pupil and other similar information.

Case Notes

Allowing pupil to use stepfather’s surname; reasonable. *Phillips v. Board of Education of Township of River Vale, Bergen County, and Stayback*, 92 N.J.A.R.2d (EDU) 131.

6:3-6.2 General considerations

(a) This subchapter applies to all district boards of education or private agencies which provide educational services by means of public funds. District boards of education shall include, but not be limited to, all county boards of special services school districts, county vocational boards of education, jointure commissions, educational services commissions, education programs operated by county residential facilities and State-operated special education programs.

(b) Each district board of education shall have the responsibility to compile and maintain pupil records and to regulate access, disclosure or communication of information from educational records in a manner that assures the security of such records in accordance with this subchapter.

(c) Pupil records shall contain only such information as is relevant to the education of the pupil and is objectively based on the personal observations or knowledge of the certified school personnel who originate(s) the record.

(d) The district board of education shall notify parents and adult pupils annually in writing of their rights in regard to pupil records and pupil participation in educational, occupational and military recruitment programs. Copies of the applicable State and Federal laws and local policies shall be made available upon request. District boards of education shall make every effort to notify parents and adult pupils in their dominant language.

(e) A nonadult pupil may assert rights of access only through his or her parents. However, nothing in these rules shall be construed to prohibit certified school personnel, in their discretion, from disclosing pupil records to nonadult pupils or to appropriate persons in connection with an emergency, if such knowledge is necessary to protect the health or safety of the pupil or other persons.

(f) The parent or adult pupil shall either have access to or be specifically informed about only that portion of another pupil’s record that contains information about his or her own child or him or herself.

(g) Each district board of education shall establish written policies and procedures for pupil records which:

1. Guarantee access to persons authorized under this subchapter within 10 days of the request, but prior to any review or hearing conducted in accordance with the State Board of Education rules;
2. Assure security of the records;
3. Enumerate and describe the pupil records collected and maintained by the district board of education;
4. Provide for the inclusion of educationally relevant information in the pupil record by the parent or adult pupil;
5. Allow for the designation, release and public notice of directory information as defined herein;
6. Provide the parent or adult pupil a 10-day period to submit a written statement to the chief school administrator prohibiting the institution from including any or all types of information about the student in any student information directory before allowing access to such directory and school facilities to educational, occupational and military recruiters pursuant to N.J.S.A. 18A:36-19.1;
7. Assure limited access to pupil records by secretarial and clerical personnel pursuant to N.J.A.C. 6:3-6.5; and
8. Provide for the access and security of pupil records maintained in a computerized system.

(h) All anecdotal information and assessment reports collected on a pupil shall be dated and signed by the individual who originated the data.

(i) The chief school administrator or his or her designee shall require all permitted pupil records of currently enrolled pupils to be reviewed annually by certified school personnel to determine the education relevance of the material contained therein. The reviewer shall cause data no longer descriptive of the pupil or educational situation to be deleted from the records except that prior notice must be given for classified students in accordance with N.J.A.C. 6:28. Such information shall be destroyed and not be recorded elsewhere. No record of any such deletion shall be made.

(j) No liability shall be attached to any member, officer or employee of any district board of education permitting access or furnishing pupil records in accordance with these rules.

(k) When the parent's or adult pupil's dominant language is not English or the parent or adult pupil is deaf, the district board of education shall provide interpretation of the pupil record in the dominant language of the parents or adult pupil.

Case Notes

Contract to show during homeroom 12-minute television broadcast having two minutes of commercials was not abuse of managerial authority. *New Jersey Education Association v. Trenton Board of Education*. 92 N.J.A.R.2d (EDU) 481.

Student was not improperly denied admission to honor society. *Hook v. Board of Education of Borough of South Plainfield*, 92 N.J.A.R.2d (EDU) 331.

6:3-6.3 Mandated and permitted pupil records

(a) The district board of education shall not compile any other pupil records except mandated and permitted records as herein defined.

1. Mandated pupil records are those pupil records which the schools have been directed to compile by New Jersey statute, regulation or authorized administrative directive. Mandated pupil records shall include the following:

i. Personal data which identifies each pupil enrolled in the school district. These data shall include the pupil's name, address, date of birth, name of parent(s), citizenship and sex of the pupil. The district board of education is prohibited from recording the religious or political affiliation of the pupil and/or parent unless requested to do so in writing by the parent or adult pupil. The district is also prohibited from labeling the pupil illegitimate;

ii. Record of daily attendance;

iii. Descriptions of pupil progress according to the system of pupil evaluation used in the district. Grade level or other program assignments shall also be recorded;

iv. History and status of physical health compiled in accordance with State regulations, including results of any physical examinations given by qualified district employees;

v. Records pursuant to rules and regulations regarding the education of educationally handicapped pupils; and

vi. All other records required by the State Board of Education.

2. Permitted pupil records are those which a district board of education has authorized by resolution adopted at a regular public meeting to be collected in order to promote the educational welfare of the pupil. The district board of education shall report annually at a public board meeting a description of the types of pupil records it has authorized certified school personnel to collect and maintain. The pupil records so authorized must also comply with this subchapter as to relevance and objectivity.

6:3-6.4 Maintenance and security of pupil records

(a) The chief school administrator or his or her designee shall be responsible for the security of pupil records maintained in the school district and shall devise procedures for assuring that access to such records is limited to authorized persons.

(b) Records for each individual pupil shall be maintained in a central file at the school attended by the pupil. When records are maintained in different locations, a notation in the central file as to where such other records may be found is required.

(c) When records are stored in a computerized system, computer programmed security blocks are required to protect against any security violations of the records stored therein. To guard against the loss of pupil records, school districts must maintain an updated duplicate copy of pupil records.

(d) Mandated or permitted records required as part of programs established through state administered entitlement or discretionary funds from the U.S. Department of Education must be maintained for a period of five years after completion of the program activities.

6:3-6.5 Access to pupil records

(a) Only authorized organizations, agencies or persons as defined herein shall have access to pupil records.

(b) The district board of education may charge a reasonable fee for reproduction, not to exceed the schedule of costs set forth in N.J.S.A. 47:1A-2, provided that the cost does not effectively prevent the parents or adult pupils from exercising their rights under this subchapter or under rules and regulations regarding educationally handicapped pupils.

(c) Authorized organizations, agencies and persons shall include only:

1. The parent of a pupil under the age of 18 and the pupil who has the written permission of such parent;
2. Pupils at least 16 years of age who are terminating their education in the district because they will graduate secondary school at the end of the term or no longer plan to continue their education;
3. The adult pupil and the pupil's parent who has the written permission of such pupil, except that the parent shall have access without consent of the pupil as long as the pupil is financially dependent on the parent and enrolled in the public school system or if the pupil has been declared legally incompetent by a court of appropriate jurisdiction. The parent of the financially dependent adult pupil may not disclose information contained in the adult pupil's record to a second or third party without the consent of the adult pupil;

4. Certified school district personnel who have assigned educational responsibility for the pupil;

5. Certified educational personnel who have assigned educational responsibility for the pupil and who are employed by:

- i. An approved private school for the handicapped;
- ii. A state facility;
- iii. Accredited nonpublic schools in which pupils with educational disabilities have been placed according to N.J.S.A. 18A:46-14; or
- iv. Clinics and agencies approved by the Department of Education;

6. A district board of education, in order to fulfill its legal responsibility as a board, has access through the chief school administrator or his or her designee to information contained in a pupil's record. Information shall be discussed in executive session unless otherwise requested by the parent or adult pupil;

7. Secretarial and clerical personnel under the direct supervision of certified school personnel shall be permitted access to those portions of the record to the extent that is necessary for the entry and recording of data and the conducting of routine clerical tasks. Access shall be limited only to those pupil files which such staff are directed to enter or record information and shall cease when the specific assigned task is completed;

8. Accrediting organizations in order to carry out their accrediting functions;

9. The Commissioner of Education and members of the New Jersey Department of Education staff who have assigned responsibility which necessitates the review of such records;

10. Officials of other district boards of education within the State of New Jersey in which the pupil is placed, registered or intends to enroll subject to the following conditions:

- i. Mandated pupil records shall be forwarded to the receiving district with written notification to the parent or adult pupil;
- ii. Permitted records shall be forwarded to the receiving district only with the written consent of the parent or adult pupil except where a formal sending-receiving relationship exists between the school districts;
- iii. All records to be forwarded shall be sent to the chief school administrator or his or her designee of the school district to which the pupil has transferred within 10 days after the transfer has been verified by the requesting school district;

iv. The chief school administrator or his or her designee shall request all pupil records in writing from

the school district of last attendance within two weeks from the date that the pupil enrolls in the new district;

v. The chief school administrator or his or her designee of the school district of last attendance shall upon request, provide a parent(s) or an adult pupil with a copy of the records disclosed to other educational agencies or institutions; and

vi. Proper identification, such as a certified copy of the pupil's birth certificate, shall be requested at the time of enrollment in a new school district;

11. Officials of the United States Department of Education who have assigned responsibilities which necessitate review of such records;

12. Officers and employees of a State agency who are responsible for protective and investigative services for pupils referred to that agency, pursuant to N.J.S.A. 9:6-8.40. Wherever appropriate, district boards of education shall ask such State agency for its cooperation in sharing the findings of the investigation;

13. Organizations, agencies and persons from outside the school if they have the written consent of the parent or adult pupil, except that these organizations, agencies and persons shall not transfer pupil record information to a third party without the written consent of the parent or adult pupil;

14. Organizations, agencies and individuals outside the school, other than those specified in this section, upon the presentation of a court order; and

15. Bona fide researchers who explain in writing the nature of the research project and the relevance of the records sought and who satisfy the chief school administrator or his or her designee that the records will be used under strict conditions of anonymity and confidentiality. Such assurance must be received in writing by the chief school administrator prior to the release of information to the researcher.

Law Review and Journal Commentaries

Education—Conscientious Employees. Judith Nallin, 138 N.J.L.J. No. 15, 54 (1994).

Case Notes

Access to pupil records; regulation caused teacher to reasonably believe that superintendent's order involved violation of law for purposes of Conscientious Employee Protection Act. *Delran Educ. Ass'n v. Delran Bd. of Educ.*, 277 N.J.Super. 538, 650 A.2d 7 (A.D.1994).

Commissioner of Education lacked jurisdiction to determine parent's request for release of test papers. *Cheung v. Freehold Tp. Board of Education*, 94 N.J.A.R.2d (EDU) 576.

No due process violation in suspending student without hearing; no right to expungement of student records. *F.H. and S.H., Parents of G.H. v. North Warren Regional High School District*, 93 N.J.A.R.2d (EDU) 580.

Parents were not entitled to access to teacher's notes concerning student's school work. *D.B. and K.B. v. Board of Education of City of Vineland*, 93 N.J.A.R.2d (EDU) 546.

Pupil's administration files determined to be pupil records; parents entitled to copies of all records. *GVD v. Ramapo-Indian Hills Regional High School Bd. of Ed.*, 6 N.J.A.R. 480 (1983).

6:3-6.6 Conditions for access to pupil records

(a) All authorized organizations, agencies and persons defined in this subchapter shall have access to the records of a pupil, subject to the following conditions:

1. No pupil record shall be altered or destroyed during the time period between a request to review the record and the actual review of the record.

2. Authorized organizations, agencies and persons from outside the school whose access requires the consent of parents or adult pupils must submit their request in writing together with any required authorization, to the chief school administrator or his or her designee.

3. The chief school administrator or his or her designee shall be present during the period of inspection to provide interpretation of the records where necessary and to prevent their alteration, damage or loss. In every instance of inspection of pupil records by persons other than parents, pupils or individuals who have assigned educational responsibility for the individual student, an entry shall be made in the pupil record of the names of persons granted access, the reason access was granted, the time and circumstances of inspection, the records studied and the purposes for which the data will be used.

4. Unless otherwise judicially instructed, the district board of education shall, prior to the disclosure of any pupil records to organizations, agencies or persons outside the school district pursuant to a court order, give the parent or adult pupil at least three days' notice of the name of the requesting agency and the specific records requested. Such notification shall be provided in writing if practicable. Only those records related to the specific purpose of the court order shall be disclosed.

5. A record may be withheld from a parent of a pupil under 18 or from an adult pupil only when the local education agency obtains a court order or is provided with evidence that there is a court order revoking the right to access. Only that portion of the record designated by the court may be withheld. When the local education agency has or obtains evidence of such court order the parent or adult pupil shall be notified in writing within five days of his or her request that access to the record has been denied and that the person has the right to appeal this decision to the court issuing the order.

6:3-6.7 Rights of appeal for parents and adult pupils

(a) Pupil records are subject to challenge by parents and adult pupils on grounds of inaccuracy, irrelevancy, impermissible disclosure, inclusion of improper information or denial of access to organizations, agencies and persons. The parent or adult pupil may seek to:

1. Expunge inaccurate, irrelevant or otherwise improper information from the pupil record;

2. Insert additional data as well as reasonable comments as to the meaning and/or accuracy of the records; and/or

3. Request an immediate stay of disclosure pending final determination of the challenge procedure as described in this subchapter.

(b) To appeal, a parent or adult pupil must notify the chief school administrator in writing of the specific issues relating to the pupil record. Within 10 days of notification, the chief school administrator or his or her designee shall meet with the parent or adult pupil to revise the issues set forth in the appeal. If the matter is not satisfactorily resolved, the parent or adult pupil may appeal this decision either to the district board of education or the Commissioner of Education within 10 days. If appeal is made to the district board of education, a decision shall be rendered within 20 days. The decision of the district board of education may be appealed to the Commissioner pursuant to N.J.S.A. 18A:6-9 and rules adopted in accordance with such statute. At all stages of the appeal process, the parent or adult pupil shall be afforded in a full and fair opportunity to present evidence relevant to the issue. A record of the appeal proceedings and outcome shall be made a part of the pupil record with copies made available to the parent or adult pupil.

(c) Appeals relating to the pupil records of educationally handicapped pupils shall be processed in accordance with the requirements of N.J.A.C. 6:28.

(d) Regardless of the outcome of any appeal, a parent or adult pupil shall be permitted to place a statement in the pupil record commenting upon the information in the pupil record or setting forth any reasons for disagreement with the decision of the agency. Such statements shall be maintained as part of the pupil record as long as the contested portion of the record is maintained. If the contested portion of the record is disclosed to any party, the statement commenting upon the information must also be disclosed to that party.

Case Notes

Parents could not expunge psychological evaluations from child's reports absent showing of inaccuracy. *B.M. v. Union County Regional*, 95 N.J.A.R.2d (EDS) 149.

6:3-6.8 Retention and destruction of pupil records

(a) A pupil record is considered to be incomplete and not subject to the provisions of the Destruction of Public Records Law, N.J.S.A. 47:3-15 et seq., while the student is enrolled in the school district.

(b) Mandated pupil records of currently enrolled pupils, other than that described in (e) below, may be destroyed

after the information is no longer necessary to provide educational services to a pupil. Such destruction shall be accomplished only after written parental or adult pupil notification and written parental or adult pupil permission has been granted or after reasonable attempts of such notification and reasonable attempts to secure parental or adult pupil permission have been unsuccessful.

(c) Upon graduation or permanent departure of a pupil from the school system:

1. The parent or adult pupil shall be notified in writing that a copy of the entire pupil record will be provided to them upon request.

2. Information in pupil records, other than that described in (e) below, may be destroyed but only in accordance with the Destruction of Public Records Law, N.J.S.A. 47:3-15 et seq. Such destruction shall be accomplished only after written parental or adult pupil notification and written parental or adult pupil permission has been granted, or after reasonable attempts at such notification and reasonable attempts to secure parental or adult pupil permission have been unsuccessful.

(d) No additions shall be made to the record after graduation or permanent departure without the prior written consent of the parent or adult pupil.

(e) The New Jersey public school district of last enrollment graduation or permanent departure of the pupil from the school district and shall keep in perpetuity a permanent record of a pupil's name, date of birth, sex, address, telephone number, grades, attendance record, classes attended, grade level completed, year completed, name of parent(s) and citizenship status.

Case Notes

Parents were not entitled to expungement of school psychologist's report from handicapped student's records. *B.C. v. Flemington-Raritan Board*, 95 N.J.A.R.2d (EDS) 255.

Psychologist's report on student could not be expunged from public school records absent inaccuracy. *B.M. v. Union County*, 93 N.J.A.R.2d (EDS) 265.

SUBCHAPTER 7. WITHDRAWAL FROM REGIONAL SCHOOL DISTRICTS

6:3-7.1 Application and data for investigation of advisability of withdrawal

(a) Any district board of education constituting part of a limited purpose regional school district or the governing body of such local school district, or the governing body of any municipality constituting part of an all purpose regional school district may apply to the county superintendent of schools to make an investigation as to the feasibility of

withdrawal of such constituent district or municipality from the regional district. Such body shall adopt a resolution by a recorded roll call vote of the majority of the full membership requesting that the county superintendent make such investigation. The resolution request submitted to the county superintendent shall include the following information:

1. A general description of the regional district and of the withdrawing constituent district, including but not limited to, the type of educational system, number of schools and grade levels served, community population, and geographical characteristics;
2. Enrollment data, including, but not limited to, the number of pupils enrolled as reported by grade on the Annual Application for State School Aid and estimated projected enrollments, by grade level, for the succeeding five school years for both the withdrawing district or municipality and the remaining regional district, based on growth factors using average percentages for the last three school years;
3. The racial composition of the pupil population enrolled in the regional district from the withdrawing district or municipality, and the effect of such withdrawal upon the racial composition of the remaining pupil population of the regional district;
4. Two appraisals of each school site which is part of the regional district prepared by qualified appraisers. If two or more constituent districts or municipalities request such a study, the selection of the appraisers and the cost of the required appraisals shall be made and shared jointly; and
5. The proposed educational plan for the pupils from the withdrawing district or municipality presently enrolled in the school or schools of the regional district.

(b) Within 21 days following adoption of such resolution, such body shall confer with the remaining constituent districts and/or the governing bodies of the constituent municipalities, and the regional board of education and the county superintendent to review the procedure required for withdrawal from a regional school district. Such conference may be called by the county superintendent at the request of a constituent district or municipality prior to its adoption of such resolution.

Case Notes

Request for severance of sending-receiving relationship between districts denied. Bloomingdale Borough Board of Education v. Butler Borough Board of Education, 94 N.J.A.R.2d (EDU) 553.

Negative racial impact of terminating sending-receiving agreement precluded termination, even though no financial or educational negative impact was shown. Board of Education of Borough of Merchantville v. Board of Education of Township of Pennsauken, 93 N.J.A.R.2d (EDU) 464.

6:3-7.2 Investigation and report by county superintendent of schools

(a) Upon receipt of the resolution and accompanying data pursuant to N.J.A.C. 6:3-7.1, the county superintendent shall make an investigation and shall within 60 days after receipt of such request issue a report, in accordance with N.J.S.A. 18A:13-52 or 13-67, to governing bodies of the municipalities constituting the regional district and the board of education of the regional district. If the county superintendent's report addresses the withdrawal of a constituent district or districts from a limited purpose regional district, the report shall also be issued to the boards of education of the constituent district. When the county superintendent has begun such investigation, no action shall be taken upon a subsequent request from another constituent district or municipality of the same regional district until the investigation, report and action thereon have been completed. This report shall be based on data supplied by the petitioning district(s) or municipality(ies) including, but not limited to, the following:

1. A general description of the regional district, including the number of constituent districts, schoolhouses, area of the total district, and area of the withdrawing district or municipality;
2. Enrollment data, including the number of pupils enrolled as reported by grade on the Annual Application for State School Aid and estimated projected enrollment, by grade level, for the succeeding five school years for both the withdrawing district or municipality and the remaining regional district, based on growth factors using average percentages for the last three school years;
3. Enrollment data, by grade level, showing the racial composition of the present regional pupil population and the resulting racial composition for both the withdrawing district or municipality and the remaining regional district if withdrawal is approved;
4. The operating expenses of the regional district for the present school year including the distribution of such current operating expenses among the constituent districts or municipalities;
5. The equalized valuation of each constituent district or municipality of the regional district as set forth in N.J.S.A. 18A:7D-1 et seq.;
6. The average equalized valuations of the real property of each constituent district or municipality of the regional district as set forth in N.J.S.A. 18A:24-1 et seq.;
7. The borrowing margin of each constituent district or municipality of the regional district as determined by N.J.S.A. 18A:24-1 et seq., and the revised borrowing margin of each constituent district or municipality and the withdrawing district or municipality, if approval is granted;

8. The apportionment of debt service for the current school year among all the constituent districts or municipalities of the regional district by dollar amounts and percentages;

9. The replacement costs of schoolhouses and additions, grounds, furnishings and equipment of the regional district, and the replacement cost of any schoolhouse, and additions of the regional district including grounds, furnishings, and equipment, situated in the withdrawing district or municipality. School building replacement costs will be calculated by the Bureau of Facility Planning Services as follows:

i. The current overall cost per square foot for school construction in New Jersey, updated annually in the fall of each year, will be multiplied by the gross area of the building;

ii. This figure will include construction costs, moveable and built-in furniture and equipment, and fees; and

iii. Site costs will be excluded since they are already included under N.J.A.C. 6:3-7.1(a)4;

10. The amount of indebtedness, if any, to be assumed by the withdrawing constituent district or municipality;

11. The distribution of assets and liabilities of the existing regional district and remaining regional district following withdrawal in the manner as provided by N.J.S.A. 18A:8-24;

12. A proposed educational plan for the withdrawing constituent district or municipality, if withdrawal is approved, including the effects of such withdrawal upon the educational program of the remaining regional district;

13. A summary of the advantages of withdrawal to both the withdrawing constituent district or municipality and the remaining regional district and the disadvantages to the withdrawing constituent district or municipality and the remaining regional district; and

14. A recommendation regarding the request for withdrawal from the regional school district by the county superintendent.

(b) Upon adoption of a resolution, in accordance with N.J.S.A. 18A:13-51 or 13-66, the board of education of the regional school district shall not incur any additional indebtedness for capital projects, pending either the rejection of the proposal at a special school election or an effective date of withdrawal as determined by the Commissioner of Education.

Case Notes

Local school district lacked authority to issue bonds to finance proposed payment to regional district upon favorable vote. Winslow Tp. Bd. of Educ. v. Board of Review, 275 N.J.Super. 206, 645 A.2d 1230 (A.D.1994).

6:3-7.3 Special school election

(a) If the application is granted upon completion of the procedures contained in N.J.S.A. 18A:13-54 to 56 or 18A:13-69 to 71, the county superintendent shall confer with the regional board and the boards of education of the constituent districts of a limited purpose regional district or the constituent municipal governing bodies of an all purpose regional district and fix a day and time for holding a special school election, in accordance with the provisions of N.J.S.A. 18A:13-57 or 18A:13-72.

(b) To be effective the proposal must be adopted by a majority of the legal votes cast within the withdrawing constituent district or municipality, and, in addition, a majority of the combined legal votes cast within the remainder of the regional district.

6:3-7.4 Final determination of board of review

The board of review, which shall consist of the Commissioner, who shall be chairperson, the State Treasurer or his or her designee, and the Director of the Division of Local Government of Community Affairs, shall include in its final determinations required by N.J.S.A. 18A:13-56 or 18A:13-71, any specific conditions under which its consent is granted in order to insure that a thorough and efficient system of public schools will be maintained in the withdrawing district(s) or municipality(ies) and the remaining regional district.

Case Notes

Section of statute allowing state Board of Education to deny petition for authorization to conduct referendum on dissolution of regional school district for "Any other reason which it may deem to be sufficient..." requires reason that implicates constitutional obligation for maintenance of thorough and efficient system of free public schools. In re Petition for Authorization to Conduct a Referendum on the Dissolution of Union County Regional High School Dist. No. 1, 298 N.J.Super. 1, 688 A.2d 1082 (A.D.1997).

School districts cannot agree to a two-year moratorium on opposition to severance of a sending/receiving relationship. Lincoln Park Board of Education v. Boonton Board of Education, 95 N.J.A.R.2d (EDU) 493.

Negative fiscal and educational consequences precluded severance of sending-receiving relationship between school districts. Bloomingdale Board of Education v. Butler Board of Education, 95 N.J.A.R.2d (EDU) 151.

Termination of sending-receiving relationship authorized. Board of Education of Township of Boonton v. Board of Education of Town of Boonton, 92 N.J.A.R.2d (EDU) 235.

6:3-7.5 Effective date of withdrawal

If approved at said election, the withdrawal of the district or municipality shall become effective upon a date to be determined by the Commissioner of Education, pursuant to the provisions of N.J.S.A. 18A:13-59 or 18A:13-74.

SUBCHAPTER 8. (RESERVED)

Subchapter Historical Note

Subchapter 8, Provisions for the Education of Homeless Children and Youth, was recodified as N.J.A.C. 6:5 by R.1999 d.296, effective September 7, 1999. See: 31 N.J.R. 1409(a), 31 N.J.R. 2640(a).

SUBCHAPTER 9. SCHOOL ETHICS COMMISSION

6:3-9.1 Scope and purpose

(a) The rules set forth in this subchapter have been adopted for the purpose of effectuating the legislative intent of N.J.S.A. 18A:12-21 et seq., the School Ethics Act (P.L. 1991, c.393), which seeks to "... ensure and preserve public confidence ..." in the integrity of elected and appointed school board members and school administrators.

(b) To achieve this goal the Legislature has adopted N.J.S.A. 18A:12-24 which prescribes a code of ethics by which school officials are to be guided in the conduct of their offices and positions and created a School Ethics Commission specifically for the purpose of enforcing those ethical standards through a procedure for reviewing complaints of ethical violations, investigating those complaints and ultimately rendering recommendations to the Commissioner as to the imposition of sanctions when violations are demonstrated.

Case Notes

School board member whose wife was employed as secretary by board was censured for participating in closed-door session of board concerning salary negotiations with bargaining unit representing district employees. In the Matter of Robert A. Wilgus, 96 N.J.A.R.2d (EDU) 1041.

School board member was reprimanded on conflict of interest grounds for submitting his wife's name for consideration as candidate for part-time position and for later voting to hire her for that position. In the Matter of Frank Montagna, 96 N.J.A.R.2d (EDU) 1038.

School board member whose wife was employed by district as teacher was reprimanded on conflict of interest grounds for participating in discussion and negotiation of collective bargaining agreement. In the Matter of Edward Vanderbeek, 96 N.J.A.R.2d (EDU) 1035.

Removal of school board member on conflict of interest grounds was justified where board member was involved in suit against board concerning his granddaughter's attendance of district schools while allegedly not domiciled in district. Point Pleasant Board of Education v. Ciliberto, 96 N.J.A.R.2d (EDU) 990.

School board's denial of employment to applicant based on nepotism policy was warranted even though applicant was related to prospective supervisor by marriage only. Carroll v. Board of Education of the City of Trenton, 96 N.J.A.R.2d (EDU) 901.

Reprimand was appropriate penalty for new school board member who violated School Ethics Act. In the Matter of Harrison, 96 N.J.A.R.2d (EDU) 553.

School district administrators and board members do not violate school ethics law by failing to report incident where school board member attended underage drinking party. The School Ethics Commission v. McIvor, 96 N.J.A.R.2d (EDU) 143.

School board member not disqualified if not directly or indirectly interested in son's medical claims against board. Brick Township Board of Education v. Mercer, 96 N.J.A.R.2d (EDU) 5.

Member of school board who was owner of school district's only newspaper publishing official school notices was in conflict of interest subject to removal. Brick Board of Education v. Mueller, 95 N.J.A.R.2d (EDU) 222.

Employment for company under contract with board of education; board membership. Andrews v. Union Township Board of Education, 94 N.J.A.R.2d (EDU) 315.

Employment as bus driver for transportation company under contract with Board was conflict of interest. Andrews v. Union Township Board of Education, 94 N.J.A.R.2d (EDU) 315.

Indirect interest in litigation disqualified newly elected member. Hawthorne Borough Board of Education v. Taliaferro, 94 N.J.A.R.2d (EDU) 197.

Lessee of space from Board of Education disqualified from seeking election to Board. Thomas v. Edwards, 93 N.J.A.R.2d (EDU) 369.

Municipal counsel precluded from seeking election to Board of Education. Rodecker v. Gonzalez, 93 N.J.A.R.2d (EDU) 367.

6:3-9.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

“Administrator” means any officer, other than a board member, or employee of a local school district who:

1. Holds a position which requires a certificate that authorizes the holder to serve as school administrator, principal, or school business administrator; or
2. Holds a position which does not require that the person hold any type of certificate but is responsible for making recommendations regarding hiring or the purchase or acquisition of any property or services by the local school district; or
3. Holds a position which requires a certificate that authorizes the holder to serve as supervisor and who is responsible for making recommendations regarding hiring or the purchase or acquisition of any property or services by the local school district.

“ALJ” means an administrative law judge from the Office of Administrative Law.

“Board member” means any person holding membership, whether by election or appointment, on any board of education other than the State Board of Education.

“Censure” means a formal public action read into the record of the School Ethics Commission to rebuke a school official who has been determined by the Commission to have been in violation of N.J.S.A. 18A:12-21 et seq.

“Commission” means the School Ethics Commission and its staff as created pursuant to N.J.S.A. 18A:12-21 et seq.

“Commissioner” means the Commissioner of Education or his or her designee.

“Complainant” means the person bringing a complaint of alleged violation of N.J.S.A. 18A:12-21 et seq.

“Financial Disclosure Statement” means the statement of personal finances which school officials are required to annually file pursuant to N.J.S.A. 18A:12-21 et seq.

“Income” for purposes of these rules shall be as defined by the Internal Revenue Service except as otherwise provided in N.J.S.A. 18A:12-26a(1).

“Local School District” for purposes of these rules means any local or regional school district established pursuant to Chapter 8 or Chapter 13 of Title 18A of the New Jersey Statutes and shall include jointure commissions, county vocational schools, county special services districts, educational service commissions, educational research and demonstration centers, environmental education centers, and educational information and resource centers.

“Member of the immediate family” means the spouse or dependent child of a school official residing in the same household. Dependent child shall be defined as any child claimed as a dependent on the school official’s Federal and state tax returns.

“Newly elected or appointed board member” means any board member who has never served as a member of either an elected or appointed school board.

“OAL” means the Office of Administrative Law.

“Personal/Relative Disclosure Statement” means the statement required by N.J.S.A. 18A:12-21 et seq. of a school official setting forth whether said official has a relative or any other person related to the school official by marriage, employed by the district in which he or she serves; whether said official or a relative is a party to a contract with the school district in which the school official holds office or position; or whether the school official or a relative is employed by, receives compensation from, or has an interest in, any business which is a party to a contract with the school district in which the school official holds office or position.

“Related to the school official by marriage” as used in the statute shall be limited to mother-in-law, father-in-law, brother-in-law and sister-in-law.

“Relative” means the spouse, natural or adopted child, parent or sibling of a school district.

“Reprimand” as a sanction imposed by the Commissioner upon recommendation of the School Ethics Commission shall consist of a letter from the Commission rebuking a school official for having been found to have breached the standards of conduct prescribed by N.J.S.A. 18A:12-21 et seq.

“Respondent” means the board member or administrator against whom a complaint is made pursuant to N.J.S.A. 18A:12-21 et seq.

“School official” means a board member or an administrator.

“Spouse” means the person to whom the school official is legally married under New Jersey law.

Case Notes

Conflict of interest; board member’s spouse employed as teacher and belonged to teachers’ association. *Hahn v. North Brunswick Township Board of Education*, 92 N.J.A.R.2d (EDU) 428.

6:3-9.3 Filing of disclosure statements and procedures in the event of incomplete filing or failure to file disclosure statements

(a) Annually, on or before April 30th of each year or as otherwise provided in these rules all school officials shall file, on forms provided through the county superintendent both a Financial Disclosure Statement and a Personal/Relative Disclosure Statement with the Commission. Additional copies of the aforesaid statements shall be prepared by the school official and maintained on file at the local district and the office of the county superintendent in order to facilitate public access to the documents. All disclosure statements filed in accordance with N.J.S.A. 18A:12-21 et seq. and these rules shall be public records.

(b) In order to comply with the requirement in (a) above, each local district board secretary shall annually, on or before February 1, cause to be developed and transmitted to the county superintendent a list of names of those school officials, by office and position, whose responsibilities would require the filing of the Financial and Personal/Relative Disclosure Statements pursuant to the criteria contained in N.J.S.A. 18A:12-21 et seq. and these rules. Offices and positions vacant or to become vacant by virtue of expiration of terms or personnel leaving the district are to be listed.

(c) Board members in Type II school districts elected to their positions in the annual April school election shall file within 30 days of taking office. The board secretary shall, upon election of new board members, inform the county superintendent of the names of the newly elected members and the county superintendent shall provide the forms necessary for compliance.

(d) Board members in Type II districts who are appointed to fill vacancies will file the requisite disclosure forms within 30 days of taking office. The board secretary will upon such appointment inform the county superintendent of the appointment. The county superintendent shall provide the member with the required disclosure statements.

(e) Board members in Type I school districts who are initially appointed to take office on May 16 or June 1 as the case may be, shall file the required disclosure statements within 30 days of taking office. Board members in Type I districts appointed to fill vacancies shall likewise file within 30 days of taking office. The board secretary shall inform the county superintendent of the appointment of new board members and the county superintendent shall provide the required forms.

(f) Administrators as defined in this subchapter, appointed to fill vacancies after the April 30 filing date shall file the required disclosure forms within 30 days of the appointment. The board secretary shall inform the county superintendent of the appointment of any new administrators or supervisors subject to the requirement to file disclosure statements under the School Ethics Act.

(g) On or before April 30, May 16 or June 1 as the case may be, the board secretary of each local school district shall, before transmitting the completed disclosure forms to the county superintendent, check that he or she has reviewed each disclosure form to assure that both required forms have been filed; that all questions have been answered or indicated as not being applicable; and that each copy is signed by an original signature. Further, the board secretary shall provide to the county superintendent the names of all persons on the February 1 list of school officials compiled in accordance with (b) above and all newly elected or appointed persons who have failed to file as required by N.J.S.A. 18A:12-21 et seq.

(h) Failure to file as prescribed by N.J.S.A. 18A:12-21 et seq. shall constitute a violation of the School Ethics Act and shall result in the suspension and/or removal of a school official upon recommendation of the Commission and affirmation of the Commissioner.

(i) Prior to any action taken by the Commission for failure to file, the Commission shall direct that the school official show cause in writing under oath within 20 days why the penalty of suspension and/or removal should not be imposed. The Order to Show Cause shall be considered the equivalent of the complaint required by N.J.S.A. 18A:12-29.

(j) Upon receipt of the response to the Order to Show Cause or upon expiration of the time period for so filing the Commission shall proceed to a determination. The school official shall be advised of his or her right to appear before the Commission, be represented by counsel and present witnesses on his or her behalf prior to the Commission's making its probable cause determination.

(k) If the Commission determines that a filing is incomplete, it shall first return the filing to the school official for completion within 20 days of receipt of the returned filing. At the expiration of such time period or upon further receipt of a filing which fails to provide such information as required by statute, the Commission shall issue an order directing the school official in writing under oath to show cause within 20 days why the Commission should not impose such sanctions as permitted pursuant to N.J.S.A. 18A:12-29. If such order is not returned within the 20-day period, or if the response is returned with the school official's refusal to properly file, the Commission may assume that the school official's incomplete filing is in effect a failure to file and the Commission shall proceed to a determination. The school official shall be advised of his/her right to appear before the Commission, be represented by counsel and present witnesses on his/her behalf.

(l) If the school official responds to the Order to Show Cause by asserting either that the filing is complete or other appropriate factors, the matter shall be included as a contested case under N.J.S.A. 18A:12-29(b) and transmitted to the Office of Administrative Law for a hearing pursuant to N.J.A.C. 6:3-9.18 and 9.19.

6:3-9.4 Board member training

(a) Each newly elected or appointed board member shall during the first year of his or her first full term on any board complete a training program prepared and offered by the New Jersey School Boards Association which shall include in its content instruction relative to the board members responsibilities under the School Ethics Act.

(b) The New Jersey School Boards Association shall notify the board secretary in writing, when newly elected or appointed board members have attended a training program that satisfies the training mandate. The board secretary shall transmit the names to the county superintendent of the board member(s) who have completed the requirement.

(c) By March 31 of each year the New Jersey School Boards Association shall present to the School Ethics Commission a list of those board members who have not fulfilled the training mandate for the previous filing period.

(d) Board members failing to comply with the training mandate shall be considered in violation of N.J.S.A. 18A:12-33. The Commission shall proceed thereafter in conformance with the procedures set forth in N.J.A.C. 6:3-9.3(i).

Case Notes

Employee of company providing school bus services was required to cure the conflict of interest. *Oehlke v. Tewksbury Township School Board of Education*, 93 N.J.A.R.2d (EDU) 792.

6:3-9.5 Functions and authority of School Ethics Commission

(a) Pursuant to the provisions of N.J.S.A. 18A:12-21 et seq. the School Ethics Commission shall:

1. Prescribe a Financial Disclosure Statement and a Personal/Relative Disclosure Statement in accordance with N.J.S.A. 18A:12-26 and 25 respectively, to be filed by all school officials as defined herein on or before April 30 of each year or at such other times as these rules may require;

2. Appoint such professional and clerical staff and incur such expenses as may be necessary to carry out the provisions of N.J.S.A. 18A:12-21 et seq. within the limits of funds appropriated or otherwise made available to it. All appointments shall be made in accordance with the provisions of Title 11A of the New Jersey Statutes;

3. Issue advisory opinions, receive and investigate complaints raised pursuant to section 9 of the School Ethics Act (N.J.S.A. 18A:12-29) and conduct such hearing as may be necessary to determine whether probable cause exists to credit the allegation raised in any complaint brought before it;

4. Receive and retain disclosure statements required by the Act. Requests for copies of disclosure statements will be subject to copying fees pursuant to N.J.S.A. 47:1A-1 et seq.;

5. Have the authority to compel the attendance of such witnesses and the production of such documents as it may deem necessary and relevant to carrying out its duties under the Act;

6. Be empowered, along with the persons appointed by it, to administer oaths and examine witnesses under oath; and

7. Recommend to the Commissioner the reprimand, censure, suspension or removal of school officials found to have violated the School Ethics Act.

6:3-9.6 Membership of School Ethics Commission

The School Ethics Commission shall consist of nine members appointed for three year terms in the configuration and manner prescribed by N.J.S.A. 18A:12-21 et seq.

6:3-9.7 Officers of School Ethics Commission

(a) In accord with the provisions of N.J.S.A. 18A:12-21 et seq. the Commission, by majority vote, shall elect one member to serve as chairperson for a term not to exceed one year.

(b) Should the chairperson resign or otherwise be unable to serve out his or her term, the remaining Commission members shall, by majority vote, elect a chairperson from among their membership to fill out the remainder of the unexpired term.

(c) Should the chairperson be unable to attend any regular or special meeting of the Commission, the Commission, by majority vote of the quorum present, shall select a temporary chairperson to preside over the meeting.

6:3-9.8 Duties of chairperson

The chairperson shall preside over the meetings of the Commission and shall perform all duties incidental to that office.

6:3-9.9 Term of office of chairperson

The chairperson shall serve a one-year term which shall commence on July 1 of each year.

6:3-9.10 Regular meetings

Regular monthly meetings shall be held at such time, place and on such dates as established by the Commission and notice of such regular meetings shall be made in accordance with N.J.S.A. 10:4-6 et seq., Open Public Meetings Act.

6:3-9.11 Special meetings

Special meetings may be called by the Commission chairperson at any time or at the request of any three members. Three days notice of any special meeting shall be given to each member. Public notice of such special meeting shall be made pursuant to N.J.S.A. 10:4-8.

6:3-9.12 Quorum

A quorum shall consist of a majority of the number of voting members of the Commission.

6:3-9.13 Committee structure

(a) The Commission shall act as a committee of the whole.

(b) The Commission chairperson shall select a nominating committee of three persons whose function it shall be to

select a nominee for chairperson to present to the committee as a whole for approval at its May meeting.

(c) Special committees may be appointed by the chairperson to consider and make recommendations to the Commission on any matter.

6:3-9.14 Advisory opinions

(a) Any school official may request an advisory opinion from the Commission as to whether any proposed conduct or activity would constitute a violation of the provisions of the School Ethics Act.

(b) Request for advisory opinions must clearly set forth in detail the specific conduct or activity the school official seeks to undertake and the exact role he or she will play in that activity or conduct.

(c) Upon receipt of a request for an advisory opinion, the Commission shall assign a file number to the request.

1. During the course of any staff work and/or Commission deliberation with regard to the request for an advisory opinion, the request shall be identified for purposes of public access only by file number and not by the name(s) of school official(s) involved.

2. No information regarding any request for an advisory opinion shall be made public unless the information is incorporated into the advisory opinion and made public in accordance with (e) and (f) below.

(d) The Commission and/or its staff reserves the right to require additional information from the person seeking an advisory or to require the person's appearance before it or its staff.

(e) Advisory opinions issued by the Commission shall not be made public unless six members shall vote to direct the opinion be made public.

(f) Advisory opinions made public by the Commission shall delete the name and district of the school official requesting the advisory.

(g) The Commission shall render a response to the request for an advisory opinion at its next monthly meeting following its receipt of all relevant information and documentation needed to make a determination on the request.

(h) Notwithstanding the foregoing, the Commission may respond to a request for an advisory opinion by referring the issue raised to the Office of the Attorney General.

6:3-9.15 Filing and service of a complaint

(a) To file a complaint with the School Ethics Commission alleging a violation of the School Ethics Act, N.J.S.A. 18A:12-21 et seq., a complainant must file an original and two copies of such complaint using the form set forth in N.J.A.C. 6:3-9.16. Any member of the Commission may also file a complaint.

(b) No complaint shall be accepted by the Commission unless it is signed under oath by the complainant.

(c) Upon receipt of the complaint the Commission shall serve a copy of the complaint on the school official or officials named.

(d) Upon receipt of a complaint the Commission shall assign a file number to the complaint.

1. During the course of any staff work and/or Commission deliberation with regard to the complaint, the complaint shall be identified only by file number for purposes of public access and not by the name(s) of the school official(s) involved.

2. No information regarding any complaint shall be made public until the Commission takes action in accordance with N.J.A.C. 6:3-9.18(d).

3. Pursuant to N.J.S.A. 18A:12-29(e) the Commission may impose a fine not to exceed \$500.00 for the filing of a frivolous complaint.

6:3-9.16 Complaint form

(a) The form used to file a complaint is as follows:

NAME OF	:	
COMPLAINANT(S),	:	BEFORE THE SCHOOL
	:	ETHICS COMMISSION
v.	:	OF NEW JERSEY
NAME OF RESPONDENT(S)	:	COMPLAINT FORM
_____	:	

I, (Name of Complainant), residing at (Address and Phone Number of Complainant), request the School Ethics Commission to consider a complaint against the above-named Respondent whose address is (address of respondent), in accordance with the authority of the School Ethics Commission to entertain such complaints under N.J.S.A. 18A:12-21 et seq.

The facts upon which this complaint is based are as follows: (Set down below in individually numbered paragraphs the specific facts which cause you to believe that a violation of the School Ethics Act has occurred. Cite, if known to you, the section(s) of the Act which you believe to have been violated.)

1. _____
2. _____
3. _____
4. _____

WHEREFORE, I, as Complainant, request that the School Ethics Commission find and determine that the above-named Respondent has violated the School Ethics Act and that he/she be subject to such penalty as the Commission and the Commissioner of Education deem appropriate.

Date _____

Signature of Complainant
or his or her Attorney

CERTIFICATION UNDER OATH

(Name of Complainant), of full age, being duly sworn upon his/her oath according to law deposes and says:

- 1. I am the complainant in this matter.
- 2. I have read the complaint and aver that the facts contained therein are true to the best of my knowledge and belief and I am aware that the statute which created the School Ethics Commission authorizes the Commission to impose penalties for filing a frivolous complaint. N.J.S.A. 18A:12-29e.

Date _____

Signature of Complainant

Sworn and subscribed to before me this _____ day of _____, 19 ____.

Signature

(b) No complaint will be processed by the Commission nor will the Commission issue a final ruling or advisory opinion on any matter pending in any court of law or administrative agency of this State.

6:3-9.17 Answer to complaint

(a) Upon receipt of the complaint from the Commission, the respondent shall have 20 days within which to file an original and two copies of a written statement under oath with the Commission. Upon written application by the respondent, the Commission or its designee may extend the time for filing such statement.

(b) The respondent's statement shall respond directly to each allegation set forth in the complaint.

(c) The respondent shall not generally deny the allegations but shall set forth substantive reasons why the allegations are false or unfounded.

(d) Failure to respond to the complaint within the 20 day period from receipt of the complaint shall result in a notice to the respondent directing a response within 10 days of receipt.

(e) Further failure to respond shall result in a second notice which shall inform the respondent that unless an answer is received within 10 days of receipt of the second notice, each allegation in the complaint shall be deemed admitted and the Commission shall make a determination as to whether probable cause exists or the complaint should be dismissed.

6:3-9.18 Commission review

(a) Upon receipt of respondent's statement or the expiration of the time for filing such response, the Commission shall determine whether probable cause exists to credit the allegation in the complaint.

(b) In order to carry out the Commission's responsibilities under the Act to determine whether probable cause exists the Commission and/or its staff shall conduct investigations, hold hearings, compel the attendance of witnesses, and the production of documents and to examine such witnesses under oath.

(c) Prior to the Commission's determination of probable cause the respondent will be notified of his or her right to address the Commission, be represented by counsel and present witnesses on his/her behalf.

(d) Should the Commission find that probable cause does not exist, the Commission shall dismiss the complaint and so notify the complainant and the school official named in the complaint.

(e) Dismissal by the Commission shall constitute final agency action.

(f) Should the Commission determine that probable cause does exist, it shall refer the matter to the Office of Administrative Law for a hearing to be conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and shall so notify the complainant and the school official(s) named in the complaint.

Case Notes

Contested case against member of school board with respect to ethics violations required an adjudicatory hearing before a penalty could be imposed. Scannella v. Scudillo, 95 N.J.A.R.2d (EDU) 190.

6:3-9.19 Written decision

(a) Upon completion of the hearing before the OAL, the Commission shall determine by majority vote whether the conduct complained of constitutes a violation of the Act or whether the complaint should be dismissed. In rendering its decision the Commission shall be governed by the procedures and time constraints of the Administrative Procedure Act.

(b) The Commission's decision shall be in writing and it shall set forth its findings of fact and conclusions of law.

(c) If a violation is found, the Commission shall recommend to the Commissioner the reprimand, censure, suspension, or removal of the school official. The imposition of any of the foregoing sanctions shall require a vote of the majority of the full membership of the Commission.

1. The Commissioner's Resolution of Censure shall be adopted at the Commission's meeting next following the affirmance of the sanction by the Commissioner and shall

be read at the next public meeting of the district board of education following its adoption by the Commission and posted in such places as the board posts its public notices.

(d) The Commissioner shall act upon the Commission's recommendation regarding the sanction.

(e) Any appeal of the Commission's determination regarding a violation of the Act or the Commissioner's decision regarding the sanction shall be to the State Board of Education in accordance with Title 18A of the New Jersey Statutes and the procedures set forth in N.J.A.C. 6:2.